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Searching for Normal:

A History of the Discourse of the Modern Gay Rights Movement



“Power is tolerable only on condition that it mask a substantial part of itself...”
Michel Foucault, *Histoire de la sexualité*



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PREFACE

At age 15, when I walked through the halls of my high school, I always wondered who was going to come and save me—if anyone ever was going to come and save me. Jefferson County, Colorado is not the most homophobic place in the world, but like many queer young men in suburbs, rural areas, and even some urban areas across the country I was terrified to go to school each morning because of how poorly my peers treated me. I was hit, spit on, teased, and bullied to tears almost weekly. I had very few friends and supporters. Looking back, I believe that much of my suffering was due to the simple fact that I am gay. My grades suffered, I suffered from mental health disorders, and dealt with issues related to alcohol and drugs during my late teens. My problems were linked to a poor sense of self-esteem and the loneliness of being different. So, I know firsthand how homophobia damages queer people everywhere.

As a politically active individual, I feel that it is my duty to advocate for my community and the constituencies to which I belong and to search for policy solutions that might help prevent other young queers from having to contend with the issues that I have dealt with. Thus, I have chosen to devote my honors thesis to researching and critically examining the solutions have been proposed by contemporary policy makers. To be clear, this primarily consists of an examination of aspects of the gay rights movement and its tangible policy outcomes and desires. While some might argue that sodomy laws, conversion therapy, and other conservative measures designed to discourage homosexuality are ultimately beneficial to gay people by keeping us free from a life of sin, I have decided to spend as little time as possible taking those arguments into account. To begin with, those beliefs are homophobic; and exposure to homophobia, as many have proven before me, is harmful to the healthy development of young queers. Secondly, such arguments rest on a particular interpretation of a select few religious documents, and a presuppose their own argument. One cannot critically analyze a theory that is not based in anything except conjecture. However, the same cannot be said of the gay rights movement, from which most modern policies which legislate sexuality are born.

Abstract:

Searching for Normal: A History of the Discourse of the Modern Gay Rights Movement

Author: Tyler Quick

Across the industrialized world, nations and subnational entities are establishing methods by which to recognize same-sex unions, banning discrimination based on sexual orientation, and making policy decisions about how to legislate sexuality based upon the ideology of the gay rights movement. This movement relies on the classical liberal and modernist ideal of citizenship, with its grounding in human rights, and the theory of biologically innate sexual orientation to advocate for the inclusion, and perhaps the assimilation, of LGBTQ people into state and society. The critics of gay rights argue that this tactic is, at its best, assimilationist and, at its worst, harmful to queer people. In analyzing the discourse surrounding the legislation that has been passed in three case studies (the cities of São Paulo, Brazil, Mexico City, and San Francisco, California and the states in which they reside), the author hopes to determine “who is right on rights.”

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Chapter One: The Queer Problem

Since the advent of governance, the “queer problem” has posed a difficult dilemma for lawmakers.¹ It will inevitably be within the state’s interest to regulate sex and sexuality to meet its economic, political, and social goals. The conundrum posed by queerness has been regulated through a mixture of government policies, cultural practices, and economic structures. Indeed, how heteronormative societies contend with “deviant” sexual orientations has long been a central issue to be discussed in the courts, the legislatures, and every other institution in which opinion becomes policy. There has always been considerable debate as to what governments should do to address the growing demand for equal rights for queer people across the planet. Pressure groups in almost every nation on Earth are pushing the “gay-rights” agenda in policy-making bodies from city councils to the United Nations General Assembly. The evidence is clear that after decades of attempting to stamp out homosexual dissent, the great democracies of the West are relenting. In Brazil, Mexico, and the United States, the clamor for gay rights has reached a critical stage. This impact has been felt the most in the regions of these nations that are considered the most “progressive” and they have often been the first to respond to the pressures of the growing gay-rights movement. What this project seeks to explain is how the governments of San Francisco, São Paulo, Mexico City, and the states and nations in which they reside, have come to legitimize their support of the “gay rights agenda” through official discourses surrounding anti-discrimination and hate crime laws, civil unions, and other “gay rights” legislation.² Furthermore, in exploring this particular history of sexual orientation, I hope to provide a clearer answer as to why, after hundreds of years of oppression, there has been a rapid conversion to the gay rights model in contemporaneity.

The Judeo-Christian pastoral code and long-standing European cultural norms—which have long defined what constitute permissible and legitimate social actions, especially those of a sexual nature, in Western society—have fallen from their place of favor. They now compete with a pre-eminent modernism, beholden to a vision of freedom and liberation for all of mankind, in which the discourses of “progress,” “citizenship,” and “human rights” color the lens through which policy-makers make decisions on social policy. It is within the context of this struggle between modernist values and historic homophobia which the movement for gay rights has taken shape. Even before the first fists flew at the Stonewall Inn in New York City on June 28, 1969, activists and their allies in the governments of the West had begun the quest to give homosexual and bisexual men and women the full citizenship that they believed they were entitled to as productive and law-abiding members of the liberal societies in which they lived.³ From the beginning their efforts have faced not only opposition from the homophobic forces of the cultural past, but also from some of the more progressive contingents of civil society who view the rights-centric discourse on homosexuality as extremely problematic; citing it as a product of the very power regime which it seeks to protect its citizens from.

The question of what (if anything) a government should do about “the queer problem” remains to be answered. Gay-rights activists clamor for reform and an extension of liberal citizenship to gay people, while their critics within the queer community question the ability to achieve homosexual liberation through that method. What I am seeking to understand through this thesis is which philosophical beliefs have influenced the decisions of governments when it comes to formulating policy on sexual orientation and which solutions have been proposed once a particular ideology is formulated. The gay-rights movement has become a strong force in the politics of all three of our case studies. What this paper will examine is why this is so and which

discourses they have relied on to meet their goals. Can modern, liberal citizenship be extended to queer people? How has liberal citizenship been extended to queer people? Who are the queers to which it has been extended? What are the other possible motivations of the policy-makers who have proposed and passed gay-rights legislation? Does marriage equality help queer people by giving them a space in civil society or harm them by assimilating them into a heterosexist practice? Is it even possible to have a postmodern sexual politics? If so, what does that look like in terms of government policy?

In order to study which gay rights policies have been proposed, to whom the policies have had an effect, and the rationale for why the policies were proposed in the first place, I will examine gay-rights legislation adopted in the cities of San Francisco, São Paulo Brazil, and Mexico City and the states in which they reside.⁴ These three cities' metropolitan areas are among the largest on the planet, are focal points of international business and the transnational trade in culture and ideas, and reside in a nation which is either industrialized or industrializing rapidly. The contrasts between San Francisco and the cities in Latin America will allow me to control for differences in economic development and resources. All three cities have reputations for being "gay-friendly" and have burgeoning homosexual social scenes and activist movements. Although Brazil and Mexico are both considered to be nations of the developing world, they are linked to the industrialized West through their colonization by Iberian nations and recent transitions to liberal democracy (de la Dehesa 2010, 7). "Western, liberalist" strains of thought are very influential among the government leaders of both nations (de la Dehesa 2010, 7) as they have been in the United States since its inception. This isn't to say that the cultural differences do not exist. The United States is currently considered one of the major foci of Western civilization while Brazil and Mexico exist on what de la Dehesa (2010, 7) describes as its "semi-periphery."

However, I am confident that using the cases of these Latin American states will provide insight as to whether the hegemonic, modernist project can bring about the societal change necessary for the inclusion of queer subjects in a “semi-peripheralsal” state’s citizenry.

I will examine the laws and policies of San Francisco, São Paulo, and Mexico City (as well as the laws and policies of the states in which they reside) which regulate sexual orientation and the treatment of queer people in both public and private spheres. In analyzing the language used within the legislation itself, as well as by policymakers, opinion leaders, and activists in interactions with the media, I hope to understand the underlying assumptions and motivations for passing specific policies.

It should be patently obvious, given the changes in policy that have occurred in the past two decades, that changing philosophies about sex and sexual orientation have affected public policy. However, once the discourses driving these changes are properly analyzed, I believe that it will be apparent that the reasoning behind these changes is still rooted in a conservative desire to keep sexuality regulated and maintain the status quo. The idea that a gay revolution has occurred and queer people will be free once marriage equality and anti-discrimination laws are implemented across the world is inaccurate. If anything, I believe that my research will demonstrate that power has simply transformed. liberal governments only pursue the gay rights agenda as a means of retaining legitimacy in the ability to legislate what people can and cannot do with their relationships and sex lives.

Chapter Two: Who is right on rights?

Parker and Garcia (2013, 1) are wise to highlight that “there are also historical periods in which sexuality is more sharply contested and more overtly politicized.” Pre-modern thinking generally conceptualized homosexuality as a behavior or choice. Those in positions of power dealt with what they believed to be deviant *behaviors* by attempting to discourage them through sodomy laws which often called for the sodomite’s execution. According to Michel Foucault (1978, 37), “up to the end of the eighteenth century, three major explicit codes—apart from the customary regularities and constraints of opinion—governed sexual practices: canonical law, the Christian pastoral, and civil law. They determined, each in its own way, the division between licit and illicit.” Furthermore, it is important to remember that the three influenced one another as well. Culture, enshrined in canonical law, passed down from generation to generation, was the primary source of knowledge about sex during the Dark Ages, in which governments were weak and communities were relatively autonomous. As the Christian pastoral, or at least the Christian pastoral in its most common iteration, began to normalize and situate itself as an integral component of Western culture, its prohibitions about certain forms of sex, its dogma on the meaning and purpose of sex, and its advice on the roles that men and women should play in a functioning and “good” society became predominant in the European cultural psyche. This, in turn, influenced the thought of the policy makers of the time and was codified into civil law throughout Western Europe.

These cultural, religious, and legal ideas and practices with regard to sexuality were imposed by the Europeans on their colonial subjects in the Americas. Sodomy was a crime in Spain’s New Spain colony (modern day Mexico), Portuguese Brazil, and the British colonies which would become the modern-day United States. In most public, and even many intellectual

circles, sexual behaviors which differed from heteronormative ideals were considered deviations and abominations. Homosexuality as a condition, and queerness as a subjectivity were certainly not taken into consideration when deciding how best to legislate sex and sexuality. If a man were to sleep with another man or a woman to sleep with another woman, they were committing an offense against the established codes of acceptable and unacceptable behavior and the reasons for why they might do such a thing were relatively unimportant.

The idea that homosexuality can be dissuaded through criminalization persisted up until contemporary times and, while it may be less popular than it was in decades past, it is still popular in certain opinion circles today, even among a select few policy-makers. Sodomy laws remained on the books in some American states until as recently as 2003 (*Lawrence vs. Texas*). However, those that hold these beliefs are losing their political power. 62% of Americans now believe that being a homosexual is an innate condition and 58% believe that same sex couples should be given the right to marry (Cohen 2013). Public opinion is becoming friendlier to gay rights and politicians who wish to win elections usually follow the public's wishes. The influence of scientific values and the normalization of gay rights as part of the human rights project almost certainly have brought this change in public opinion to fruition.

As Western science became more influential in opinion making spheres, homosexuality began to be viewed as an innate, and perhaps even biological, characteristic. Residual homophobia was directed towards efforts to "cure" homosexuals or, at the very least, remove them from society where their "deviant pathology" could not infect the "normal" heterosexual majority. However, as science ascended in importance to opinion makers, so too did modernism. A new emphasis was placed on citizenship and the rights of citizens. As early as the late 19th century, gay men began to use their newly legitimized "natural" identities in conjunction with

the rhetoric of inalienable human rights to advocate for equal treatment under the law.

Homosexual and bisexual citizens began to argue for a citizenship that was equal to that of their heterosexual peers. It was from this point that gay rights began to fortify its position within the greater human rights movement and the modernist project.¹

Once “progressive” and scientific ideals became ascendant during the transition to the 20th century, conservative actors in society were forced to adapt new strategies for fighting against perceived threats to the socio-sexual order:

As defined by the ancient civil or canonical codes, sodomy was a category of forbidden acts; their perpetrator was nothing more than the juridical subject of them. The nineteenth-century homosexual became a personage, a past, a case history, and a childhood, in addition to being a type of life, a life form, and a morphology, with an indiscreet anatomy and possibly a mysterious physiology. Nothing that went into his total composition was unaffected by his sexuality. It was everywhere present in him: at the root of all his actions because it was their insidious and indefinitely active principle; written immodestly on his face and body because it was a secret that always gave itself away. It was consubstantial with him, less a habitual sin than as a singular nature (Foucault 1978, 43).

Due to increasing evidence for a “medical” or “biological cause” of homosexuality, government efforts to criminalize homosexuality were delegitimized. The dominant discourse of human rights, of which gay rights was beginning to become a part, made the castigation of citizens on account of a personal quality which couldn’t be helped less socially acceptable. Be that as it may, homophobia and its allies were not yet finished. In many nations, homosexuality became discursively linked to the perceived excesses of bourgeois society. The legitimization of the homosexual as a cohesive identity, supported principally by the modernist tenets of science and progress, was also linked to the negative aspects of modernism; androgyny, decadence, avarice, and the manipulation of the popular classes by the capitalist elite. Machismo, which has long been a powerful force in the Latin “canonical law,” was—and continues to be—associated with the strength of the state and the strength of society.² Queer men were accused of deviating from their role as men and from their essential manliness. Queer men, have been characterized as not

being “real men,” or perhaps even as “failed men” (Díaz 1998, 64). Irwin, McCaughan, and Nasser (2003, 2-4) point out that the modernist aspirations of Mexico under President Porfirio Díaz resulted in an increased policing of sexuality and perhaps even more rigid sexual norms informed by new “scientific” and “intellectual” beliefs about gender sex such as “decadence,” “sex inversion,” or the “hysterical” condition of women and other feminized actors (i.e. queer men and gender non-conforming people). Sociologists, criminologists, and even biologists would use the ruse of Enlightenment reason and the scientific method to investigate and pathologize so-called “deviations” from normative sexual practices.

Despite the pathologization of homosexuality, the newfound “naturalness” of homosexuality undermined the ability of policymakers to simply punish individuals for being attracted to or having relations with someone of the same sex; yet the impetus to discourage undesirable sexual behavior remained. New methods were devised for castigating homosexual offenses “against nature” using the apparatus of the law. Policies regulating public morality and “decency” were implemented and used to prosecute any homosexual activity that could conceivably have an impact on “the public.” These laws used the rhetoric of protecting the innocence of society and the family from all carnality as their justification for the oppression of queer people. In 1938, Alfonso Millán, director of the Prostitution and Mental Hygiene Unit of the Mexican Mental Hygiene League dismissed “dualism” in favor of locating homosexuality as being a result of biological and environmental factors. However, he classified same sex desire as a “disorder” to be treated medically and used this classification of queer people to continue pursuing a policy of persecution (de la Dehesa 2010, 35). As the “naturalness” of homosexuality began to reveal itself, homophobic forces had to change their strategies in forcing the legal

institutionalization of homophobia. In the eyes of the law, “the sodomite had been a temporary aberration; the homosexual was now a species” (Foucault 1978, 43).

Thus, while the increasing consensus among the intellectual elite was that homosexuality is, at least in part, an innate quality afford queer individuals the opportunity to unite around a common homosexual identity—a gay identity—their persecution by the government continued. The first gay bars were subjected to periodic police raids. Private parties where homosexual activity was occurring were broken up and their participants arrested under the laws against public indecency. The most famous example of this in Mexico was the case of the “Famous 41” in Mexico City. A police raid on a private residence in a relatively affluent part of Mexico City on November 17, 1901 resulted in the arrest of 41 men partaking in homosexual and homosocial activity (Irwin 2003, 1).³ Nearly half of the men were dressed in women’s clothing and this case was used as evidence to suggest that homosexuality was a disruption to the public order and the stable gender system already in place (Irwin 2003, 1). A few days later, when the punishment of the revelers was announced, the newspaper *El País* blamed liberalism and relaxed social norms for a deterioration of masculinity (i.e. homosexuality) and believed that the solution proposed by the governor, sending them to the Yucatan to fight the Maya, would suffice in discouraging this behavior in the future and heal the allegedly broken masculinity of those who had been arrested (Irwin, McConough, and Nasser 2003, 23). A novella at the time written about the incident by Eduardo Castrejón (1901, 78-79), called *The 41: A Novel of Social Criticism* (*Los 41, Una novela de crítica social*), contrasted the allegedly corrupted masculinity of the 41 with “the manly incorruptible energy of the governor.” Therefore, it can be assumed that, while homosexuals were removed from a criminal social category, they were still considered to be “corrupt” and somehow a danger to the public good and social order.

The assault on homosexuality within the public sphere also took place under the guise of “cleaning up” public spaces in urban areas throughout the hemisphere. Raids on popular prostitution locales often swept up gay men “cruising” in the area as well and charged them with prostitution whether or not they actually were engaging in the sex trade. One such raid, “Operation Cleanup (Operação Limpeza),” which took place in São Paulo’s city center was alleged to be an effort to diminish the number of prostitutes and drug dealers in the city center. Yet, thousands of travestis and gay men, many of whom were not there to prostitute themselves, were arrested in numbers disproportionate to heterosexual and cisgendered people (Green 1999, 25). But, the overt oppression of queer people would soon be made more difficult by advances in both scientific and political thought (often linked together) that had begun earlier in the century.

The ideas of liberalism, at least nominally, are what the nascent American and Mexican states were built upon and greatly influenced the Brazilian government both before and after the end of the Empire in 1889 (Martin 1921, 4-21).⁴ Although Brazil and Mexico have struggled to maintain many of their democratic structures during the last century, and although some critics might allege that all three nations have co-opted the rhetoric of liberalism for cynical and authoritarian purposes, it is undeniable that liberalism, especially in its modernist iteration, has had an immense effect on the political and social thought of all three nations and has influenced their structures of society and government. For LGBTQIA identified people across the Americas, the New World commitment to modernism and liberalism has been a powerful rhetorical tool for advocating for gay equality.

An unintended side effect of the medicalization of sexuality in the 19th century was the recognition of the homosexual subject as an organic and stable, no matter how different he might be perceived to be, human being. The alleged biological innateness of homosexuality allowed

gay rights organizations to demand equal rights on the grounds that homosexuality was relatively “normal” if one considers what is natural to be normal. As Foucault argues, “there is no question that the appearance in nineteenth century psychiatry, jurisprudence, and literature of a whole series of discourses on the species and subspecies of homosexuality [...] made possible a strong advance of social controls into this area of ‘perversity’; but it also made possible the formation of a ‘reverse’ discourse: homosexuality began to speak in its own behalf, to demand that its legitimacy or ‘naturalness’ be acknowledged, often in the same vocabulary, using the same categories by which it was medically disqualified” (Foucault 1978, 101).

On June 28, 1969, the riots sparked by the police raid on a gay bar called the Stonewall Inn in New York City ignited the movement which would eventually become the modern gay rights movement. Academic and medical opinion had, slowly and not without reservations, moved towards a model of homosexuality which emphasizes its “naturalness.” Yet, public opinion, including the public opinion of gay men themselves, still demonized homosexuality and classified desire for those of one’s own sex as deviant from the norm. The gay movement in the 1960s and 70s established “gayborhoods” or queer ghettos in large cities, including São Paulo, Mexico City, and San Francisco, in which gay men and women could act upon on their desires with less fear of a violent reaction. Movements erupted in these neighborhoods, calling for anti-discrimination ordinances and equality in access to healthcare and housing. Parades, celebrating gay pride—an unheard of phenomenon just decades earlier—tumbled down the streets of the Castro and Chelsea. “A subculture similar to the ones that flourished in New York [...] existed in Rio de Janeiro and São Paulo” and Mexico City and the appropriation of urban spaces was of the utmost importance in creating safe spaces for queerness and queer individuals and communities (Green 1999, 10). Unfortunately, in every city with a queer colony, queer people still lived in

fear of being denied access to health care centers or being fired at work on account of their sexual orientation. Thus, it was from these neighborhoods that queer people began to unify around a common cause and push for legal recognition of their rights from their governments using the combined rhetoric of the naturalness of their condition and the entitlement of all “normal” citizens to their human rights. They began to advocate for laws protecting them and their livelihoods from discrimination and laws to bring those that commit crimes against others on account of sexual orientation to trial for “hate crimes.” Some began to advocate for government recognition of same sex relationships, be it in the form of marriage equality or the form civil unions. All of these movements have coalesced today into what we know as the modern gay rights movement.

The inclusion of gay people and a gay rights agenda in the project of modernity has not been without its discontents among those who consider themselves allies to queers and the queer community. There are strains of thought, prominent among activists and academics, which question the wisdom of the assumption of a human rights based discourse by those queers seeking to eliminate the institutionalized oppression which they are subjected to. The self-reflexivity made popular by postmodernism has given skeptics of the liberal gay rights agenda concerns about incorporating the “liberation” of queer people into the modernist vision of “progress.” Serious questions have been raised about using the apparatus of the state to achieve the goal of queer empowerment. Foremost among those is the concern that the state itself is an inherently heterosexist institution incapable of solving the injustices that it had a major role in perpetuating for all of recorded history. Concerns have been raised about how equal of a society can be created through the application of power, via policy change, by government entities. There are those who worry that only those queers already privileged in through their other

identities and circumstances (e.g. racially or economically) will be primary benefactors of gay rights legislation. Even the idea that the state had the authority to give one his rights has been troubling and has led to questions of whether the application of these new laws would only benefit those who are privileged enough to live within the confines of legal protection. The concern is that these laws theorize that everyone exists in a world in which legal equality is the same as equality of opportunity and denies the complex realities of individual identities and the hardships that individuals may face on account of the other categories by which society and the law categorize them.

There are some critics who are quite hostile to the marriage equality movement, seeing “gay marriage” as an assimilationist tactic which forces a heterosexist institution on queer subjects and only addresses homophobia through appeasement, not direct confrontation. Their opinions towards civil unions are little better, for “while [civil unions are] undoubtedly a step toward eliminating heterosexual privilege from family law, civil unions too imply processes of exclusion in a sense generalizing a construction of the homosexual as a sexual subject that reflects a particular experience among multiple homosexualities” (Díaz 1998, 168). In their opinion, none of the policies proposed by the advocates and allies of the gay rights movement rectify the fact that gay men across cultural and temporal boundaries have shown to be at higher risk than heterosexuals for a variety of social ills including HIV infection and suicide (Mathy, et al. 2011, 111-117) (O’Donnell, Meyer, and Schwartz 2011, 1055-1059) (Chariyalertsak, et al. 2011, 1-8). According to some of gay rights’ critics anti-discrimination laws, civil unions laws, and other policies advocated for and implemented by the gay rights movement and its legislative allies do little to actively combat homophobia; and homophobia is the primary reason why gay men are at a higher risk for personal and social maladies (Díaz 1998, 53-60).

Critics of a gay rights agenda for the queer movement point out that unequal access to resources, education, and government institutions means that for many citizens the rights are only nominal. Legal affirmation of gay rights does not necessarily discount the quotidian experience of homophobia and heterosexism, which are the primary causes of the social inequalities that queer people face. In modern Brazil, white, middle-class homosexuals have been provided greater access to the new moneyed gay economy and are more able to enjoy the wide range of social protections available to gay men, while Brazilians of lower-class backgrounds, many of whom are of African descent, still find themselves with far fewer opportunities to circulate in the gay world” (Green 2003, 285). According to James Naylor Green (1999, 13), “the lower one’s economic or social status, the more vulnerable a person [is] to police harassment.” Given the hierarchical structure of class relations in Brazilian society, members of the elite who sexually desire other men have by and large remained protected from the inconveniences of police interference,” both before and after the implementation of non-discrimination laws (Green 1999, 13).

Class isn’t the only obstacle to queer people overcoming societal handicaps. Díaz (1998, 8-10) is concerned that racial narratives portraying people of color as being less intelligent or less responsible affect the way that HIV prevention campaigns try to inform them about safe sex practices. He cites San Francisco AIDS prevention posters that command their readers to “Use Condoms,” “Play Safe,” and “Get Tested” as proof that the discourses in HIV prevention among communities of color operate under a power structure in which NGOs and prevention experts take an authoritarian approach to promoting safer sex. The commands on these posters represent the hegemonic thinking about HIV/AIDS prevention in which the predominantly white, middle class non-profit organization worker utilizes a pedagogy that does not generate dialogue between

him or her and the subjects whose behavior he or she would like to influence and, instead, coerces them into the course of action he or she presumes they would be too “deficient” to take on their own. This concerns Díaz not only because of the racialization of the subjects of this program and the stereotyping of them as being lazy, sex-driven, incompetent, and/or ignorant, but also because he is worried about its efficacy. He believes that an authoritarian pedagogy of AIDS awareness work would actually exacerbate the problem at worst, and be inefficient at best. Díaz (1998, 58-60) compares this strategy to authoritarian parenting styles which have been proven to result in young adults who have poorer social skills, worse academic achievement, and even higher rates of substance abuse. Instead, Díaz (1998, 58-60) believes that machismo and its counterpart, homophobia, along with the culture centered on family, poverty, and racism are more influential in determining whether or not a queer Latino in San Francisco will contract HIV. Furthermore, for many of the Latino men who contract HIV in San Francisco, ignorance and unawareness did not bear responsibility for their infection. The levels of awareness about HIV and its method of spreading are well known amongst the gay community of San Francisco, including queer men of color (Díaz 1998, 56).

Machismo and similar phenomena can also put queer men with an atypical gender performance at a social disadvantage as well. A strict binary of homo- and heterosexuality modeled on the prevailing cultural gender binary can only serve to reinforce the way that the gay man conceptualizes himself. In many parts of Latin America, especially among the lower classes, the “sexually penetrated “passive” male is stigmatized” and “as long as [a man] maintains the sexual role attributed to a “real” man,” the penetrative role “an homem [man] may engage in sex with other men without losing any social status” (Green 1999, 6). Not only do men who are penetrated face social scorn, they also are coerced into adopting an abject and feminized identity

which can have serious repercussions on their mental health. For many queer men who are not of the privileged classes in Latin American culture, this is an unavoidable reality. They claim the pre-scripted, feminized identities of the *bicha* (faggot in Portuguese) or the *maricón* (faggot in Spanish) because those are the only scripts they are provided by a society which reinforces their own internalized homophobia. Coming out, according to Díaz (1998, 56), becomes not a “welcoming” of the gender and sex non-normative, the feminine, and the queer and instead is a binding to a “culturally defined” role. The very idea of gay liberation is thus rendered impossible and unimaginable.

One of Díaz’s (1998, 97) more controversial claims is that “the high frequency of bisexual behavior found among Latinos is due not only to the fact that heterosexual men are allowed to find sexual release with other men but also to the large number of truly (but secretly) homosexually identified men who have chosen married life as a way to solve the homophobic family dilemma.” While it is doubtful that this is entirely accurate, machismo does force men to choose between two roles—one an effeminized gay caricature and the other ostensibly “straight.” Where Díaz is correct is in his assertion that homophobia affects both groups similarly and that HIV policy can be effective if it addresses the issues of machismo, discrimination, and homophobia. In October of 1995, the Public Media Center in San Francisco released a report that declared that “until the issue of homophobia is properly and adequately addressed in America, our nation is unlikely to generate an objective, focused response” to the HIV epidemic (Díaz 1998, 5).

It is important to be aware of gay men’s realities, so policy-makers can have an accurate sense of how to design gay men’s policy. For example, gay men are more likely than their heterosexual counterparts to abuse methamphetamine (Jacobs). While crystal meth is itself

incredibly detrimental to one's health, its abuse makes one far more likely to contract HIV because it lowers inhibitions, allows for abnormally long periods of sexual intercourse, and makes mucus membranes more likely to tear. While there are many reasons why gay men might come to abuse crystal meth, one that is rarely discussed in HIV prevention work is its ability to provide a man who might not otherwise "bottom" with lower inhibitions to do just that. In many cultures, especially those of Latin America, if a man allows another man to penetrate him he is shaming or even revoking his own masculinity. Many Latino gay men would simply not have the courage to accept a submissive, penetrated role in sex because of the cultural construction about their masculinity that accompanies it if it were not for the courage and indifference provided to them by meth (Díaz 1998, 78). Thus, for a policy maker, his or her chosen solution to the issue of methamphetamine addiction within the queer community may include decreasing the supply of the drug, increasing penalties for users to discourage use, or even increasing funding to support programs for those who are at risk. However, as noble as these intentions might be, Díaz's research suggests that more ground could be gained by attempting to alleviate the burden that queer people face because of homophobia and heterosexism.

When considering the historical roots of the gay rights movement, and its detractors today, it is very important that the question be asked, why? Why has the answer to the "queer problem" been the advocacy of gay rights? For what reasons has this transition occurred? The only way to surely know would be to examine the laws themselves. Undoubtedly, the gay rights movement is seeking to use the naturalness of diverse sexualities to normalize homosexuality. But, in doing so, what are their intended effects? Its detractors claim that the advocacy of marriage equality and anti-discrimination laws is simply a Machiavellian move designed to ensure hegemony and restrict liberty, oftentimes ignoring the serious challenges of homophobia and

heterosexism that many queer people face. Its supporters might argue that homophobia can be combated by “normalizing” queerness. But, is this even possible, and, if so, could it be just as harmful to its constituents? As Foucault tells us, “power is tolerable only on condition that it mask a substantial part of itself” (Foucault 1978, 86). If this is so, it is undoubtedly true that any agent of power who wishes to keep their power must be adaptable. Thus, the embrace of the gay rights movement by institutionalized power (i.e. governments), is predictable when one considers that the historical momentum is moving towards the normalization of queer people, in certain and specific identities and iterations. What remains to be seen, however, is to what extent power is willing to change itself and how the interjection of power has changed the goals and the policy outcomes of the gay rights movement.

Chapter Three: The Gay Bay

San Francisco, California, has long had a reputation for being a city of sexual tolerance. For many young queers San Francisco has served as the United States' queer Mecca, even up until today. A 2006 study done by the University of California Los Angeles School of Law's Williams Institute on Sexual Orientation Law and Public Policy declared San Francisco to be the gayest metropolis in the United States. Over fifteen percent of San Franciscans identify as gay, lesbian, bisexual, or queer (Gates 2006, 5).¹ Because the community is so large, and because it has a long and storied tradition of involvement in city politics, San Francisco has become one of the hubs of LGBTQIA activism in the United States. It has often been ground zero in the gay rights movement's efforts to see their beliefs made into policy; and, although San Francisco has often been at the vanguard of the movement, the State of California has sometimes lagged behind. On issues from whether or not homosexuals should be allowed to teach in public schools to gay marriage, for example California has served as the frontline in the conflict between gay rights activists and those who oppose them. There is much that one can learn much about the policies implemented by allies of the gay rights movements and what their reasoning for doing so has been from the history of the gay rights movement in this city and state,

As much as San Francisco has been conceptualized in the public imagination as a queer paradise and progressive model for the gay rights movement, the debate over gay rights in the city has been contentious at several points in its history. San Francisco's Harvey Milk became the first openly gay person elected to a public office in the U.S. when he won election to the San Francisco City and County Board of Supervisors in 1978.² San Francisco was also one of the first cities in the country to institute a domestic partnership program and enforce civil-rights and anti-discrimination ordinances designed to protect gay and lesbian people. In the late 1970s,

Harvey Milk's work against the Briggs Initiative, a ballot measure which would have banned anyone of a homosexual orientation from teaching in California public schools, helped galvanize and mobilize the queer community of the city (Jacobs, 1978).³ Milk used the increasing political power of San Francisco's queer community to ensure the passage of a 1978 ordinance which banned discrimination against individuals based on their sexual orientation (Ledbetter, 1978) (San Francisco Police Code, 1117-1162). This ordinance passed with only Milk's eventual killer, Dan White, voting against it (Stiles, 199). It was one of the first of its kind in the nation.

Three years after Harvey Milk's assassination, in 1982, the San Francisco Board of Supervisors passed an ordinance designed to give health coverage to same-sex domestic partners of city employees. San Francisco Mayor Dianne Feinstein, who is now one of California's senators, vetoed the measure. Domestic partnerships would not be put in place in San Francisco until 1990 (Elliott, 1991). In 1989, the Board of Supervisors passed a measure similar to one that had passed in 1984 in neighboring college town Berkeley, which would have allowed for the City of San Francisco to establish a domestic partnership registry (Chow, 1989). This registry would allow gays and lesbians in "intimate and committed relationships" to "be granted official city status that prohibits discrimination" (Basheda, 1989). "The law would also give domestic partners some rights granted to married couples" within the city's jurisdiction, "such as hospital and jail visitation rights" (Basheda, 1989). However, the city was required to put the ordinance to a public vote when a coalition of faith-based organizations and other conservative activists turned in a petition demanding a referendum (Basheda, 1989). The final vote was close, but this domestic partnership initiative was defeated by 1,777 votes.

One year later, the voters reversed their decision by approving the domestic partnership ordinance at the ballot. Harry Britt, the openly gay San Francisco Supervisor who replaced

Harvey Milk, sponsored the referendum. He stated that his reasons for doing so were because he believed that "the American family must not be an institution of fear, but an institution of care and understanding" and "the lesbian and gay family is not an abstraction" (Elliott, 1991). Voters agreed with Britt and the resolution passed. Supporters later fended off a an attempt to nullify the domestic partnership program at the ballot in 1992 (Herscher, 1991).

Nonetheless, the benefits reaped by those who registered as domestic partners in the City of San Francisco were still few. For the vast majority of queer San Franciscans there were few tangible benefits to the domestic partnership law. They were still shackled by unequal state and federal tax practices and the same-sex partners of those who worked in private businesses did not receive the same benefits and treatments by their partner's employer that heterosexual couples did. In order to have guaranteed access to health coverage, hospital visitation rights, and the other benefits associated with government-recognized unions, a statewide system of domestic partnerships or civil unions would have to be implemented.

The first attempt to pass a statewide domestic partnership law was in 1995. The bill was framed as a measure designed to provide equal rights to all families, not just the families of gay or lesbian couples. Its primary sponsor told the Los Angeles times that "there are a half-million unmarried couples in California who live together and provide warm and loving homes" and that his "bill gives these couples a few basic rights" (Gillam 1994, 19). This was fitting, seeing as the rhetoric of supporters of domestic partnerships and other gay rights legislation were beginning to frame their arguments more frequently in the language of universal human rights. The gay rights nonprofits and NGOs that came out most strongly in favor of the bill said that "[the bill] is in response to the horror stories we hear on a routine basis - for example of (unmarried) partners

having to fight their way to get into an emergency room when their partner is hurt" (Ness 1994, A07). Its proponents believed that this bill would rectify the wrong of "'basic human rights' [being...] denied to gay and lesbian partners" (Ness 1994, A07). Assembly Bill 627 would have established a domestic partnership registry in California for "two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring." One of the benefits of this registration would have been "[allowing] unmarried partners to visit each other in the hospital, to will each other property and to have control over each other's life if one is incapacitated" (Ness 1994, A07). If passed, it would have been the first such program in the United States and among the first in the Western Hemisphere at the subnational level. Yet, the bill would go on to die in committee.

Despite these setbacks, throughout the 1990s other cities across California, such as Long Beach and Laguna Beach, would institute municipal domestic partnership registries (Los Angeles Times 1997, 2) (Orange County Register 1992, b01). The Legislature also attempted to establish civil unions in 1997. Two Bills, Assembly Bill 54 and Assembly Bill 1059 were brought forward that year. The arguments in favor of these bills continued to rely on the language of universal human rights to gain support. They also began to advocate for, in the words of Bill Lockyer, a Hayward Democrat and supporter of the two bills, "creating a civil system that falls short of marriage but recognized domestic partners is important for "stable relationships'" (Los Angeles Times, 8).

Both of the proposed domestic partnership bills would fail in the California State Legislature in 1997 (AB 54) (AB 1059). But, this did not dissuade lawmakers from using the language of the human rights movement to bolster the argument for gay rights. Both Dianne Feinstein and Barbara Boxer, California's other senator, were among the eighteen United States

Senators to vote against the 1996 Defense of Marriage Act, which bans the recognition of same-sex relationships at the federal level and allows states to deny the recognition of same-sex marriages and civil unions performed in other states (Lochhead 1996, A.3). Boxer reiterated that she only supported "marriage for men and women," however, she did declare her support of "domestic partnerships 'as a way for people of the same sex to have a long-lasting partnership'" (Lochhead 1996, A.3.).^{4,5}

In 1999, a successful domestic partnership law was passed out of the California State Legislature, granting same-sex couples, for the first time in California, some of the same rights and benefits as heterosexual couples. The California Governor at the time, Gray Davis, declared that the law would "become [a weapon] to help 'beat back the forces of hatred and discrimination that strike at the very heart of what it means to be a Californian'" (Ingram 1999, 24).⁶ The 1999 domestic partnership bill was very specific as to which kinds of relationships could apply for a domestic partnership. Domestic partnerships were to be limited to "two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring" (Domestic Partnership Act of 1999, Section 2). As is the case in most other domestic partnership and civil union programs around the world, domestic partnerships in California have been specifically limited to couples. Relationships in which more than two people are romantically involved were still considered to be legally illegitimate in terms of equal benefits and legal protections. Furthermore, it is important to note that the only domestic partnerships considered to be valid under the parameters set forth in this bill are those "in an intimate and committed relationship" (Section 2). While this language could be interpreted as being vague and unspecific, it is still entirely possible that this legislation was designed to promote a very specific type of relationship between same-sex couples. Activists have used the language of "love" and

“commitment” and the implications that this language brings (e.g. monogamy, self-reliance, responsibility) as powerful rhetorical tools to advocate for marriage equality and civil unions. This might be related to the relative difficulty of advocating for the right to pleasure, to sex, and to “sexual freedom.” It is, from a framing standpoint, easier to advocate for relationships that mirror those of heterosexuals because they change social institutions and structures in the most minimal way possible and do little to disrupt the prevalent discourses and power structures.

There are many other prerequisites that must be fulfilled for a couple to apply for a domestic partnership in California under the auspices of the 1999 Act. To begin with, the couple applying for a civil union must “have a common residence” and “agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership” (Domestic Partnership Act of 1999, Section 2). These requirements may seem to be givens, considering the social construction of intimate relationships in modern societies; but upon further analysis, one can see quite plainly that domestic partnerships are very limiting and confine those who wish to attain a domestic partnership to specific behaviors and lifestyles. For one, any couple who meets on the internet would be incapable of entering a domestic partnership until they found a shared residence. Also, couples who have non-traditional living arrangements, such as permanent cohabitation in different cities, would be unable to sign up for a domestic partnership. To be fair, there is room for those who travel for business or have to temporarily move away from one another out of necessity to remain in a domestic partnership (Section 2). However, this is contingent upon the assumption that the other partner will return. Furthermore, by agreeing to be “jointly responsible” for one another’s finances, the state is subscribing the domestic partners to specified financial obligations.

There are other limitations put upon couples wishing to enter into a domestic partnership. Monogamy in domestic partnership relationships is compulsory. Persons already married or involved in other domestic partnerships are forbidden from entering into a new domestic partnership (Domestic Partnership Act of 1999, Section 2). Also, incest is expressly prohibited, as it is in civil marriage. Domestic partnerships are restricted to those who are not siblings, aunts, uncles, nieces, nephews, children, or parents of their partner (Section 2). Domestic partners also must be above the age of 18, but, interestingly, there is no waiver for those who are underage like there is for couples who wish to marry (Section 2).

Another stipulation of note in the 1999 Domestic Partnership Act is its limitation of domestic partnerships to homosexual couples only, with the exception of some elderly heterosexual couples (California Domestic Partnership Act of 1999, Section 3). There is little explanation as to why this is the case. And, in the 2008 *In re: Marriage* cases, the Supreme Court of California would cite this as an example of “separate but equal” treatment under the law (*In re: Marriage Cases*) and demand that the State of California grant marriage licenses to same-sex couples as a response to this incongruity. However, it is important to note that in 1999, having at least some distinction, even if it is simply rhetorical, between officially recognized homosexual relationships and officially recognized heterosexual relationships was important to lawmakers, as Senator Boxer made clear in her statement against the Defense of Marriage Act.

The domestic partnership law is not as concrete as one might believe in the specific rights it delineates for domestic partners. For example, in a clause on mutual property rights it states that “the filing of a Declaration of Domestic Partnership pursuant to this division shall not, in and of itself, create any interest in, or rights to, any property, real or personal, owned by one partner in the other partner,” essentially reserving the right to the partners (and later a judge) to

determine when and where domestic partners do have interest in or rights to their partner's property (Domestic Partnership Act of 1999, Section 2). Where it becomes clearer is in its application of rights related to healthcare. Businesses are given the "ability" to ensure the domestic partners of their employees. "It is the purpose of this article to provide employers the ability to offer health care coverage through this part to the domestic partners of their employees and annuitants" (Domestic Partnership Act of 1999, Section 3). However, the use of the word ability also implies that businesses are not legally compelled to offer such rights to domestic partners. In matters of hospital visitation, the legal requirement is more blatant. Hospitals can and must provide domestic partners the opportunity to visit their partner in the hospital. A "health facility shall allow a patient's domestic partner, the children of the patient's domestic partner, and the domestic partner of the patient's parent or child to visit" (Domestic Partnership Act of 1999, Section 4). An amendment adopted later on in the legislative session seems to either undermine or limit this given right, however. The final draft of the bill has a Section 1 appended to it which states that "it is the intent of the Legislature to retain the right of hospitals and other health care facilities to establish visitation policies in reasonable and appropriate circumstances" (Domestic Partnership Act of 1999, Section 1).

Several expansions would be made to the domestic partnership program as members of the legislature became more sympathetic towards the gay rights movement. In 2001, Assembly Bill 25 passed despite contentious debate in the State Legislature (Warren 2001, B.6.). According to Jennifer Warren of the Los Angeles Times, "at the signing ceremony, activists who fought for its passage alternately cheered and grew teary-eyed at the significance of the event" (Warren 2001, B.6.) Its supporters continued using the argument that the bill "provides important legal recognition of California's expanding ranks of nontraditional families" (Warren 2001, B.6.)

AB25 added many new legal benefits for domestic partners including the right to sue for a partner's wrongful death, make medical decisions for a partner in the hospital, adopt a partner's child using the stepparent adoption process, act a conservator for one's partner, relocate with a partner without losing unemployment benefits, and using sick leave to care for an ill or incapacitated partner" (Warren 2001, B.6.)

The gay rights movement in California continued to utilize the rhetoric of "family equality" to advocate for gay rights, but it also began to use tactics that sought to normalize gay people and make them sympathetic figures to heterosexuals. During debate over a domestic partnership expansion in 2003, Sen. Richard Alarcon, a Sylmar Democrat, declared to the chamber that his lesbian daughter "should be free of laws that favor heterosexual couples but not homosexual domestic partners" (Ingram 2003, B.1.) He proceeded to give a heartfelt speech that was a testimony as to how he had "come to the conclusion that [his daughter] is normal" (Ingram 2003, B.1.) By declaring and emphasizing her normalcy, Alarcon hoped to sway his colleagues to the belief that "she deserves to be free of antigay discrimination" (Ingram 2003, B.1.). In conjunction with the previous rhetorical focus on families, the gay rights movement had a powerful argument for marriage equality, anti-discrimination, and other gay-rights legislation in that gay people are fundamentally the same as straight people.

The courts would also expand upon the rights guaranteed to domestic partners in the following decade. Much of the judicial activism surrounding gay relationship rights began when Sharon Smith, the partner of Diane Whipple, a San Franciscan who had been mauled and killed by her neighbor's dog, sued her neighbors for damages from the dog attack. The media broadly supported Mrs. Smith's suit as evidenced by this article from the San Francisco Chronicle on February 21, 2001:

IF YOUR WIFE or husband had been mauled and killed by Robert Noel's and Marjorie Knoller's dog, you would have the legal right to file a wrongful death suit against the animal's owners. So should Sharon Smith, the longtime partner of Diane Whipple. But California law only recognizes surviving spouses, children and parents - not same-sex partnerships. Smith has decided to sue her neighbors anyway. 'I want to change some laws so that domestic partners have some recourse in the future,' she said.

The court eventually ruled in Mrs. Smith's favor, and would eventually rule that the State was obligated to provide the exact same relationship recognition that opposite-sex couples receive (i.e. civil marriage), to same-sex couples, in the exact same forms and with the exact same duties, rights, and benefits.

Marriage and relationship equity were not always foremost among the concerns of LGBTQIA citizens. If there was no way to guarantee personal safety for one's self and one's partner, legal equality—be it in personal citizenship or as a couple—would be of little use. It wasn't until 2004, however, that the issue of anti-queer and anti-trans* violence was tackled in the California Criminal Code. In order to carry a severe enough penalty to discourage violent anti-gay crimes, hate crimes legislation must be adopted at the state or federal level. The California State Legislature found it incumbent upon itself to “[declare] that it is the right of every person regardless [...] sexual orientation [...] to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals” (California Senate Bill 1234, Section 24).

California Senate Bill 1234 of 2004 sought to make hate crimes a state criminal offense. Hate crimes laws had already been established and codified in other jurisdictions, including within Californian municipalities. Those charged with committing a hate crime are levied additional penalties onto any crime that is proven to be motivated by hatred towards someone on account of their race, gender, religion, sexual orientation, or any other category by which they may be persecuted. Many states already have had hate crime laws established to deal with

racially motivated crimes since the Civil Rights Movement. However, in the late 20th and early 21st century, a push from the queer community pressured states to give similar protections to victims of crimes that were motivated by homophobia and transphobia. It is extremely important to note in the bill passed by the California State Legislature in 2004 that the official definition of sexual orientation is quite strict. Per the bill, “‘sexual orientation’ means heterosexuality, homosexuality, and bisexuality” (Senate Bill 1234, 2004, Section 4). The language of the bill strictly adheres to a rights-centric justification for hate crime laws:

No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55. (Senate Bill 1234, Section 8)

Section 8 also has stipulations that offer similar protections as those described above for the property of people protected under subdivision (a) of Section 422.55 (Senate Bill 1234, Section 8). The punishment prescribed for either of these offenses is “imprisonment in a county jail not to exceed one year” or “a fine not to exceed five thousand dollars (\$5,000)” (Senate Bill 1234, Section 8). There are also additional punishments for those who commit felonies: a person who commits a felony that is a hate crime or attempts to commit a felony that is a hate crime, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion” (Senate Bill 1234, Section 10). The Court can also assign those charged with hate crimes up to 400 hours of community service (Senate Bill 1234, Section 10). Furthermore, the court could specify the type of community service that a defendant has to serve. Among these options are:

(1) Complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and anti-social behavior if that class, program, or training is available and was developed or authorized by the court or local agencies in cooperation with

organizations serving the affected community.

(2) Make payments or other compensation to a community-based program or local agency that provides services to victims of hate violence.

(3) Be required to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's acts (Senate Bill 1234, Section 21).

The court is mandated under Senate Bill 1234 to respect the political and social considerations surrounding safety for those who are the victims of hate crimes. The court is required under the law to provide restraining orders, offer protective services, protect the anonymity of not only those who are the victims of hate crimes and even those “at risk of becoming a victim of a hate crime” (Senate Bill 1234, Section 15). Senate Bill 1234 also “[encouraged] counties, cities, law enforcement agencies, and school districts to establish education and training programs to prevent violations of civil rights and hate crimes and to assist victims” (Senate Bill, Section 16).

In a surprising move, the hate crimes legislation not only affects criminals and those who would harm LGBTQIA citizens as private citizens. It also ensures that those who feel as though they have been intimidated or coerced into abandoning their rights by those who are constitutionally charged to protect them (i.e. prosecutors, public defenders, police officers, etc.) may sue them for damages in a civil court.

If a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured. An action brought by the Attorney General, any district attorney, or any city attorney may also seek a civil penalty of twenty-five thousand dollars (\$25,000). (SB 1234, 2004, Section 1)

The bill also included some of the earliest protections for LGBTQ students in the school environment. Section 2, states:

It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, or regardless of any actual or perceived characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, equal rights and opportunities in the educational institutions of the state. (Senate Bill 1234, 2004)

Whilst Section 3 guarantees all students, under the criteria established above, the ability to participate in any program, academic or otherwise, at a public institution of the State (Senate Bill 1234, 2004).

In recent years, education equity has become extremely important for gay rights advocates in California. In 2011, Governor Jerry Brown signed the Fair Education Act of 2011⁷. The Fair Education Act of 2011 mandates that social studies curricula include the “role and contributions” of various ethnic minorities, women, and LGBT Americans to the “development of California and the United States of America.” Section 4 of the Act mandates that educational materials, including text books, include information about said contributions and societal roles and Section 5 bans schools from using materials which “[reflect] adversely upon persons on the basis [...] sexual orientation” amongst other things.

While some opponents of the bill accused it of trampling on individuals’ rights,⁸ others trumpeted the law as a “monumental victory” (Richman and Harrington 2011). The Director of Equality California, Roland Palencia, said that “thanks to the FAIR Education Act, California students, particularly LGBT youth, will find new hope and inspiration and experience a more welcoming learning environment” (Richman and Harrington 2011). “History should be honest,”

[Governor] Brown said upon passage—a rare acknowledgement on behalf of a public official on the contributions of those whose stories might differ from the canon (Richman and Harrington 2011). He went on to state that "this bill revises existing laws that prohibit discrimination in education and ensures that the important contributions of Americans from all backgrounds and walks of life are included in our history books" (Richman and Harrington 2011). Some of the bill's proponents claimed that "research shows students who learn about LGBT people find their school environments more accepting of LGBT youth, and are more likely to report that their LGBT peers are treated fairly at school" (Richman and Harrington 2011). In essence, this bill sought to free students from childhood homophobia and encourage a cultural shift towards a widespread acceptance of gay people as "normal."

Chapter Four: It's not always Carnival in São Paulo

For many foreigners, Brazil has a reputation of being something of a sexual paradise. The images of Brazilian men, women, and trans* people in Anglo-American media have been highly eroticized. The reputation for tolerance and sexual licentiousness has been extended to Brazil's LGBTQIA community as well. São Paulo, Rio de Janeiro, Salvador, and Florianópolis have all become gay mecca with burgeoning gay tourism industries and a host of new nightlife venues and other activities for visiting queer. However, not all is as sunny as it may seem in the southern paradise. During the three decades between 1964 and 1993, the Grupo Gay da Bahia reported that of the 1260 queer people were known to have been murdered, police officers committed only 25.1 % of the suspects in the cases in which the perpetrator was known (de la Dehesa 2010, 40). Institutional and societal homophobia are still affecting the lives of queer people, including those in the new “gay-friendly” metropolises.

For decades, as in the rest of the world, Brazilian queers suffered from persecution. “Public cleanup campaigns” regularly raided the areas frequented by queer people. Yet, by the 1970s, the gay rights movement which had started in Western Europe and the United States was taking hold in the larger cities of Latin America according to de la Dehesa (2010, 72) “growing gay and lesbian subcultures in major urban centers were an important expression of [the] broader cultural transformations” brought on by the importation and naturalization of gay identity and the gay rights movement in Brazil. He quotes the Argentine anthropologist and writer Nestor Perlongher describing the changes he saw in São Paulo during his exile:

Here we find the clear emergence of the gay as a character. This happens around 1974.... It happened before the appearance of a gay movement per se. In fact, it was all mixed, the movement was contentious and the gay went along for the ride. Nestor Pestana Street was a particular meeting point for contentious-gay people. Independently, there was already

another focal point, the Largo do Arouche, which was also beginning to be gay.... For this entire period there is a very clear class division. All of these places: Nestor Pestana, the Largo do Arouche, were frequented by people from the middle class.... The important thing was that at the time, the people giving cues to the middle class gay world were the intellectual theater vanguard. They would ultimately impose the gay/gay standard. Already in the early 1970s the bicha/bofe standard begins to weaken through the ideology beginning to be fostered by the people involved in theater. In the 1960s, the bicha was a woman, and the bofe was a man. Later in the 1970, this scheme began to be questioned. (de la Dehesa 2010, 72)

“Normalized” queer identities that did not rely on assuming a feminized or hyper-masculinized identity became the norm in Brazil (especially for the middle classes) as they had already become the norm elsewhere. It was clear that the process of identification for queer Brazilians was mimicking that of the United States and other countries and appropriating the strategy of “normalization” for similar political purposes. Groups such as SOMOS sprang up in São Paulo and began to argue for legislation similar to that pushed by gay rights advocacy groups in Europe and the U.S.: anti-discrimination laws, partner recognition, et cetera.

The postmodern reaction against the gay rights movement in Brazil has also been markedly strong, especially in purportedly progressive São Paulo. When the Grupo Gay da Bahia, Salvador’s largest gay rights NGO, called for marriage equality in 1983, it was quickly rejected by other activists including Somos in São Paulo who called “it the dream of heterosexuals” (de la Dehesa 2010, 128). Nonetheless, as in California, Brazilian activists would soon turn the rhetorical power that coalesced on the argument for gay rights and the political power of the increasingly queered urban sphere towards the legislature in an attempt to see policy outcomes. Many of the first policies concerning the rights of LGBTQ people in the country were passed out of the state and municipal legislatures of São Paulo. In Brazil during this time period, more effort was placed on eliminating official government discrimination and having homosexual equality reaffirmed by the government.

For many activists the first step would be made by repealing Paragraph 302 of the National Mental Health Code, which listed homosexuality as a mental illness. In 1984, São Paulo and several other large cities including Florianópolis, Rio de Janeiro, and Salvador passed resolutions against Paragraph 302 (de la Dehesa 2010, 121). One year later, the pressure put on it by the big cities convinced the federal government to remove Paragraph 302 from the Mental Health Code (de la Dehesa 2010, 121).

In 2001, the City of São Paulo passed one of Latin America's first anti-discrimination laws. The text of the law commences with a decree that "any form of discrimination upon, practice of violence against, or advocacy of the infringement of rights of a heterosexual, homosexual, bisexual, transvestite or transsexual citizen will be punished in the form of this law" (Article 1, Lei N.º440)¹. Once again, the law made it clear that sexual orientation should be defined as belonging to one of a specific set of pre-defined social categories (i.e. gay, lesbian, bisexual, heterosexual). Interestingly, this law also considers "travesti" and "transsexual" as identities within the identification category of sexual orientation. Across the world, the gay rights movement has been referred to by some as the LGBT (lesbian, gay, bisexual, transgender) movement as well.² Perhaps the pressure to be inclusive of the four components of that transnationalized identity movement are what motivated Brazil to pursue the inclusion of transgender people within the protections guaranteed by this law. Explicit protections are always put in place for those who identify as L and G (lesbian and gay) and usually B (bisexual) when anti-discrimination or hate crimes legislation is proposed by the gay rights movement. If other categories are brought up, they most likely appear as iterations of the T (transgender) and do not always include other gender identifications. It is both interesting, and potentially problematic, that the needs of trans* people are tied to those of queer people in this law.

In the very next section of the law, sexual orientation is redefined in broader terms. “For purposes of the provisions of this law, it should be understood that sexual orientation implies the right of the individual to relate, affectively and sexually, with anyone, regardless of sex, gender, appearance, clothing or any other characteristics” (Article 1, Lei N.º440)³. In Brazil, the rights associated with one’s “sexual orientation” appear to be related more to one’s personal right to free association and the right to pleasure so long as it does not infringe upon the rights of others. Therefore, the legitimacy of this law is not as reliant as others on the assumption that a “gay” or “trans” identity is due to one’s inherent nature. However, the language is still couched in the terms of human rights.

The 2001 law specifies fourteen ways in which one can be considered to have been “discriminated against” based on one’s “sexual orientation.” These fourteen are: the prevention or hindrance of entry into public spaces and buildings, the refusal of a client or customer, the refusal of access to a public service, the prevention or impairment of the purchase of goods, the prevention of access to common areas, the refusal of medical care, the incitement of discrimination through the media, the manufacture and distribution of goods or media that encourage discrimination, the denial or employment (including dismissal from one’s current job and the refusal of a promotion), the prevention of holding a public office or attending a public event, levying additional taxes or incurring unique costs against someone, the differentiation of service, the prohibition of public display of affection, and the prohibition of thought or speech on account of one’s real or perceived sexual orientation (Article 1, Lei N.º440).⁴ It is important to remember that, while these fourteen proscribed forms of discrimination are expansive, the municipal government is still fundamentally in control of determining whether an action is the result of discriminatory beliefs or attitudes and what actions can be considered to be harmful or

not. This has been partially accounted for by the fifteenth section of this same article in the law which declares that other acts of discrimination not categorized under the bill may also be considered as violations of Lei 440 (Article 1, Lei N.º440). However, in the case that someone decides to pursue a discrimination case and the act of discrimination was not specifically delineated in this law, that individual is still subject to the interpretation of some holder of institutional power as to whether or not the action actually constituted discrimination.

Those who are found to be guilty of breaking the anti-discrimination law are subjected to some interesting punishments beyond what is to be expected.⁵ They are expected to pay a fine that varies between one thousand and three thousand reais and may also have their business license suspended or even revoked (Article 2, Lei N.º440). Furthermore, they may also be banned from pursuing any official business contracts with the municipal government of São Paulo (Article 2, Lei N.º440). Section 4 of Article 2 also declares that those who are found to have committed an act of discrimination whilst in the employ of the government may also be relieved of their posts. The law does its best to shelter those who might worry about retaliation from those they accused of discrimination and those who are in positions of power and might commit acts of discrimination on account of the initial complaint. Similarly to California's anti-discrimination law, this law protects the individual's right to privacy throughout the process of pursuing a legal case of discrimination (Article 4, Lei N.º440).

Within months of the passage of Lei Número 440 in the municipal council of São Paulo City, a similar piece of legislation was introduced to the legislature of São Paulo State. Once again the law makes it clear that "there shall be punishment, under the terms of this law, for all manifestations of the discrimination or attempted discrimination against a homosexual, bisexual,

or transgender citizen” (Article 1, Lei N° 10.948). The state law was, however, more strict in its determination of what exactly constitutes discrimination. Discrimination, per Lei 10,948, is defined by eight distinct actions: violent action or harassment, the prohibition of entrance or presence in a public space, overcharging for lodging or property, hiring or firing, the refusal of employment, the prohibition of free expression, and the refusal of a service on account of one’s perceived or real sexual orientation (Article 2, Lei N° 10.948)⁷. Unlike the municipal anti-discrimination law, there is no clause reserving the right to claim an unenumerated form of discrimination.

This law also takes it upon itself to specify that public and military officials may also be prosecuted under the terms of this law (Article 3, Lei N° 10.948). While the municipal law did not expressly say that public officials can be prosecuted under its terms, it could be assumed that such is the case given the provision that public officials can lose their jobs as a result of participating in acts of discrimination. That being said, the state law takes special provisions to ensure that those expected to enforce the laws on discrimination do not partake in discriminatory practices themselves. Another major difference from the municipal law is that the state law sets forth a process by which anti-discrimination claims are considered and processed. A recognition of a discriminatory act by the state government requires an official action on behalf of the supervisory government authority (e.g. the State Secretary of Justice or Secretary of Citizens’ defense) and/or an official communicative from relevant NGOs (Articles 4 and 5, Lei N° 10.948). Those who file claims of discrimination must also fill out an official report providing details of the incident either in person or via telephone, fax, or the internet (Article 5, Lei N° 10.948). This demonstrates that a higher level of scrutiny is applied to discrimination claims and that there is a great burden of proof upon those who make the claims.

Like the Municipal law, the fine associated with committing an act of discrimination varies between one and three thousand reais (Article 6, Lei N° 10.948). The state law also follows the municipal law's example in declaring that state licenses and state employment can also be terminated with a guilty charge (Articles 6-8, Lei N° 10.948). In Brazil, it would appear that economic incentivization has been the primary avenue through which to discourage anti-gay sentiment and discrimination. Gay rights legislation have, therefore, come to regulate not only relationships and the individual lives of queer people, but also society as a whole.

Attempts to gain legal recognition for same-sex Brazilian couples have been coupled with efforts to ban anti-gay discrimination in Brazil since the birth of that nation's gay rights movement. In 1991 Marta Suplicy introduced a bill calling for civil unions in the national Chamber of Deputies (de la Dehesa, 129). Although Suplicy knew that her bill wouldn't pass, she wanted to "start dialogue" about the issue of relationship inequality (de la Dehesa, 129). It would be a long time until civil unions and marriage equality would be brought to Brazil.

In 2011, a case was brought before the Brazilian Supreme Court to challenge the laws of Brazilian states which limited the official government recognition of relationships to heterosexual couples. The 2011 case, ADPF 132, limited itself to the treatment of "stable unions" between people of the same sex by the government and the law and the entitlement of those same-sex couples who participate in "stable unions" to receive the benefits resulting from the official recognition of their relationships or families by the government (ADPF 132, 2). Once again, the repetition of the words family and stable function as not so subtle hints as to what kinds of queer relationships the government values.

ADPF 132 affirms that the government is required to provide homosexual couples with the exact same rights as heterosexual couples and bases this ruling in Brazil's constitution.

In order to substantiate the oral arguments, this ruling contends that the discriminatory legal treatment often given to 'homoaffective' unions is not supported by the Federal Constitution, which has pillars in "the right to equality (art. 5, caput), the right to liberty, which implies freedom of choice (art. 5, II), the principle of human dignity (art. 1, IV), and principle of legal certainty (art. 5, caput) "(Fl. 2). (ADPF 132, 2)⁸.

Constitutions serve as the back bones of democracies and ADPF 132 rules that, no principle or value protected by Constitution is promoted through the non-recognition of affectionate unions developed between people of the same sex. Rather, what is produced is a direct violation of the constitutional purpose of "establishing a pluralistic society" free from prejudice (ADPF 132, 6)⁹.

ADPF 132 goes on to cite the Charter of 1988, the Constitution drafted in the wake of the dictatorship which affirms the Brazilian States' commitment to human rights as additional support for the necessity of official government recognition for same-sex relationships (ADPF 132, 9). The Constitution states that some of the Federative Republic of Brazil's objectives and goals are: the constitution of a free, just, and united society, the guarantee of national development, the eradication of poverty and marginalization are a result of social inequality, and the promotion of the wellbeing of all Brazilians, without regards to any quality by which they might be discriminated against (Constituição de 1988, Art. 3). The Charter also goes on to state that "all are equal before the law, without distinction based on any "nature," guaranteeing that all Brazilians and those living in Brazilian have the inviolable right to life, liberty, equality, security, and property" (Constituição de 1988, Art. 5)¹⁰. ADPF 132 also cites the Preamble to the Charter of 1988 in its arguments for same-sex relationship recognition:

We, the representatives of the Brazilian people, gathered in the National Constituent Assembly to establish a democratic state, destined to ensure the exercise of social rights and individual freedoms, safety, well-being, development, equality and justice as

supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, both domestically and internationally, with peaceful settlement of disputes, promulgate, under the protection of God, the following Constitution of the Federative Republic of Brazil. (Constituição de 1988)¹¹.

The Court decided that this should be construed as to say that, while there are no explicit protections for gay rights in the Brazilian Constitution, the intention of the Brazilian people in manufacturing and ratifying this document does guarantee that LGBTQIA people are entitled to the exact same human-rights as their cisgender, heterosexual counterparts (ADPF, 9).

The Court then went on to declare that not only did the lack of official recognition of same-sex couples serve no state purpose, but it also violated Constitutional Principles (ADPF, 13):

Indeed, it can be stated that differential treatment between family entities expressly provided for in the Federal Constitution and the homoffective unions presents no plausible justification, from the perspective of the principle of equality. It is offensive to common sense - and the normative force of the principle of equality - in the case of art. 19 of Decree-Law n ° 220/75, may be granted leave to one partner or spouse to treat the disease of her consort, being impossible to maintaining union homoafetiva stable - whose relationship is based on the same assumptions of freedom and affection that other unions - similar treatment. (ADPF 13)¹².

The court goes one to declare that “considering, therefore, that affectionate relationships, whether homosexual or heterosexual, are based on the same factual support, there is no reason [...] to assign to them different legal treatment” (ADPF 132, 14). As others have done, the Court recognizes that gay people have a right to “practice” their homosexuality and declares it as “normal” human behavior that warrants no need for government intervention (ADPF 132, 14). The ruling goes on to cite the examples of government recognition of same-sex relationships in other countries, including South Africa, France, Uruguay, and Canada, to bolster its argument that the recognition of same-sex relationships is a matter of human rights (ADPF 132, 16).

That is the fundamental argument of the court in demanding that same-sex relationships receive the same treatment by the government as heterosexual relationships. “Considering, therefore, that affective relationships, be they homosexual or heterosexual, are based on the same factual support, there is no reason [...] to assign to them different legal treatment” (ADPF 14). The court equates homosexual and heterosexual relationships, removing any categorical difference between them and granting to gay couples the privilege of being considered “normal.” The court then states that “certainly it can be said that their current legal treatment discriminates against those in homoaffective unions” and that this violates “the pursuit of the common good, identified in the Constitution as a fundamental value” (i.e. the common civil rights that gay couples, as “normal people” are entitled to) because “undoubtedly, [homoaffective unions] constitute families” the same way that heterosexual unions do (ADPF 14-15).

Chapter Five: Married in Mexico

The gay rights movement has had a complicated relationship with government in Mexico. The political opportunities that the movement had in late 20th century Mexico were fewer than those presented to activists in Brazil and the United States. Like Brazil, Mexico was dominated by one party rule. However, the main opposition to the status quo in Mexico came not from the left, as it did in Brazil, but from the rightist Partido de la Acción Nacional (PAN):

Beyond the fact that the PAN was an unlikely ally for gay and lesbian activists given its roots in Catholic lay organizations and its conservative base, the divided opposition reinforced the tight-knit though internally diverse ideological community on the left within which debates on sexuality and gender emerged in the country, particularly in the capital. In Brazil, on the other hand, the right-wing military regime was opposed by a larger and more ideologically diverse, though more politically unified democratic front encompassing sectors ranging from Marxists to centrist liberals and even old-line political bosses; while many gay and lesbian activists, including many autonomists, identified with the left, the movement overall reflected this relatively greater ideological heterogeneity. These differences were compounded by Mexico's political centralization. That is, while there were groups not only within but outside Mexico City that did not raise the banners of socialism and radical change, the country's political centralization was also reflected in the relatively greater political weight of the major groups organizing in the capital. (de la Dehesa 2010, 100)

While the lack of political opportunities made prospects more difficult in Mexico, LGBTQIA advocacy groups still formed in the large globalized cities and began to plan to increase their influence¹. In 1982 CLHARI (El Comité de Lesbianas y Homosexuales en Apoyo a Rosario Ibarra/The Gay and Lesbian Committee in Support of Rosario Ibarra), a group unified around the leadership of feminist activist Rosario Ibarra, organized a meeting to discuss the upcoming federal election (de la Dehesa 2010, 90). The committee launched six activists as candidates for federal deputy with the PRD, four in Mexico City and two in Guadalajara (de la Dehesa 2010, 90). According to de la Dehesa, although they knew they wouldn't win the election, "they approached the election as a stage for political theater and a source of symbolic capital, to increase the movement's visibility and mobilize support." Their platform included an end to

police violence and the sexual harassment and rape of gays and lesbians, and advocated for respect for sexual rights (de la Dehesa 2010, 90).

The first major victory for gay rights in the Federal District came in 1992, when “an anti-discrimination ordinance to Mexico City’s Police Code was put in place by the Human Rights Commission of the Federal District (de la Dehesa 2010, 152). “The election in 1997 of the lesbian activist Patria Jimenez to the Chamber of Deputies and the first Forum on Sexual Diversity and Human Rights in the Federal District Legislative Assembly (ALDF) in 1998 marked a symbolic turning point in activists’ relations with the legislative field” (de la Dehesa 2010, 147). While legislative activists efforts had begun a decade prior in both San Francisco and São Paulo, Mexico City made an effort to catch up at the turn of the century. In 1999, the ALDF passed the first anti-discrimination law in Mexico (de la Dehesa 2010, 147).

After more than a decade of intense efforts, Mexico City passed a bill in 2006 that established domestic partnerships in the Federal District. The *Ley de Sociedad de Convivencia para el Distrito Federal* created the first registry for same-sex partners in Mexico. The text of the law commences by declaring that its intent is to promote the “public order and social interest” of the Federal District, matching the lofty rhetoric that was used by gay rights activists in Brazil (*Ley de Sociedad de Convivencia*, Art. 1). The fact that many anti-discrimination laws, civil union laws, and other laws concerning gay rights use this language demonstrates the authors’ desire to imbue gay rights measures with the same lofty ideals and goals of the liberal modernist project.

Unlike California’s domestic partnership law, any couple, not just those of the same sex may apply for a domestic partnership in Mexico City. On the other hand, similarly to California, Mexico City requires that couples who apply for domestic partnerships be in committed

relationships in which they share a residence and are mutually responsible for one another (Ley de Sociedad de Convivencia, Art 2 & 3).² In fact, the documentation necessary to apply for a domestic partnership must include “the address where [the applicants] designate [their] common household” and an testimonial detailing the willingness of the domestic partners to share a common household, remain in a permanent relationship, and be mutually responsible for one another’s livelihoods (Article 7). In Chapter Four of the law, it is declared that a domestic partnership shall be terminated if, amongst other things, a couple is proven to be living in separate homes for more than three months (Article 20).³ The law, like the Californian domestic partnership law, contains the prohibitions on one entering a domestic partnership if he or she is already married or from entering a partnership with a close blood relative (Article 4). Once again, the law makes it clear that not every relationship is eligible or worthy of government recognition.

The rights generated by this law also are similar to those created by the California domestic partnership program. Article 14 guarantees the right to inheritance, with the same processes and obligations as it functions in marriage. This includes the right of one partner to inherit the home of the other upon his or her death (Article 23). Article 15 allows for one’s partner to exercise guardianship in the event that one of the partners is placed under civil or military interdiction. Article 18 allows for domestic partners to be treated in the same manner as married or common-law spouses in terms of property law. In comparison to the original 1999 domestic partnership program in California, this law seems to be more expansive. In fact, the provisions for same-sex couples in domestic partnerships, pursuant this law, differ little from the rights and responsibilities provided heterosexual couples via marriage. In essence, domestic partnerships in Mexico City were designed to mirror marriage, albeit with a different name.

Therefore, it was not surprising that three years after the implementation of domestic partnerships Mexico City changed its civil code to allow for couples who are of the same sex to marry. A bill was introduced which eliminated any references to gender as it pertains to marriage in the Federal District's Civil Code. In an interview with the Latin American Tribune, a supporter of the bill, Assemblyman David Razú, said that “this simply acknowledges the rights of one social sector with no detriment to another” (Mexico City Lawmakers to Consider Gay Marriage). He went on to justify same sex marriage using the language of the Constitution, saying that “the bill seeks to be in agreement with Article 1 of the Constitution, which says that no person can be discriminated against for any reason, and with Article 2 of the Civil Code, which says that no person can be deprived of the exercise of their rights for reasons of sexual orientation” (Mexico City Lawmakers to Consider Gay Marriage). This municipal ordinance altered Chapter Three of the Mexico City Civic Code read that “marriage is the free union of two people for the purposes of realizing the community of life, where both are seeking respect, equality and mutual aid” (Mexico City Civic Code, 146).⁴

After the passage of this law, conservative forces, led by certain parties within the PAN, decided to appeal the case to the Supreme Court of Mexico to question its constitutional authority in redefining marriage. Ultimately, the Court upheld the law, and often relied upon same logic and rhetoric that were utilized by Razú in his defense of same sex marriage in doing so.

The case, *Acción de la Inconstitucionalidad 2 de 2010*, elaborates more on why the Supreme Court of Mexico believed that the city government of the Federal District was in the right in its implementation of equal marriage laws for same-sex couples. The Court believed that the stigma associated with homosexuality would only disappear once queer people and couples

of the same sex were given the same rights and roles as their heterosexual peers (Acción de la Inconstitucionalidad, 14-15).⁵ They declared that “the legal institution of marriage, even before the reform challenged, violated the principle of freedom and equality of people with preferences for others of the same-sex” (Acción de la Inconstitucionalidad, 15). They argued that because “the fundamental right to marry and found a family, cannot be forbidden on account of race, nationality or religion,” that it might similarly be unconstitutional to forbid marriage on basis of sexual orientation (Acción de la Inconstitucionalidad, 17).

The Court cites not only Articles 1 and 2 of the Constitution, as Razú did. They also cite Article 4 of the Constitution as well in their support of equal marriage rights for same-sex couples (Acción de la Inconstitucionalidad, 2). This Article states that men and women are equal before the law. It also shall protect the organization and development of the family (Constitución Política de los Estados Unidos Mexicanos) The Court makes it known that their interpretation of this provision of the Constitution reflects upon the authors’ desire to ensure the full protection of the family as an institution of Mexican society and promote the strengthening of the family as such a unit (Acción de la Inconstitucionalidad, 3).⁶ It is under these auspices that the Court stated that the constitutional issue of what can or cannot be considered a family was one that should have been considered even before the gay marriage bill passed in Mexico, and even more so now that it had (Acción de la Inconstitucionalidad, 4-5). Given that “marriage is also of order and social significance, not just private” interest, because of its intimate association with the constitution of family, the Court explicitly framed the issue of same-sex as a matter of state interest, paramount above other civil rights questions in its need to be resolved (Acción de la Inconstitucionalidad, 5).⁷ The Court recognizes that heterosexual marriage is privileged by the current Constitution. While on face value, this might be construed by some as to hint that

someone heterosexual couples have more rights than couples of the same sex. But, the court believes that this is not necessarily so:

It goes unnoticed that, while the current Constitution considered that the ideal model of a family to be composed of a father, mother and children, in social reality, families may be structured differently. In this regard, the protection of rights and the regulation of the obligations arising as a result of a family relationship must be protected by appropriate legal institutions created by the legislature, within the framework set forth in Article 4 of the Constitution, whose ideal model is described by the Permanent Constitution. Therefore, if the ideal family model, presented by the Permanent Constitution for the purposes of the Mexican state is composed of a father, a mother and children, therefore, it should be the appropriate institution of marriage, because this figure, within the cluster of rights and obligations of guardianship, found those on reproduction as a means to raise a family, nonetheless there will be families in which reproduction is not the main objective and therefore there is should still be legal protection through legal figures such as common law marriage or civil unions. (Acción de la Inconstitucionalidad, 5)⁸

The Court cites anthropological evidence stating that family is a necessary component of a healthy society (Acción de la Inconstitucionalidad, 5).⁹ This “social necessity” to not only promote and protect the family, combined with the constitutional mandate to protect the rights of individuals, irrespective of sexual orientation, is the main rational for why the Court believed that the State should “adopt policies and actions to achieve support and assistance in achieving the aims of the family” in regards to same-sex couples (Acción de la Inconstitucionalidad, 6).¹⁰

The Court determined that, under these guidelines, the State (and the Federal District) did indeed have a legitimate interest in establishing marriage for partners of the same sex. The Court recognized a legitimate set of “elements that were used to encourage reform, only for the figure of marriage” which included the recognition of same-sex partners based upon the constitutional rights of queer people guaranteed in Sections 1 and 2 of the Mexican Constitution, similar measures taken place in other nations, the desire to support sexual diversity and individuals’ sexual rights, amongst others (Acción de la Inconstitucionalidad, 7-8).¹¹

Thus, after reflecting upon the elements which legitimized the establishment of Mexico City's marriage law, and considering the duties of the state to protect individual rights and the rights and institution of the family, the Supreme Court found that the redefinition and reformation of marriage laws was constitutionally compliant and potentially necessary. They cited the fact that by creating "separate but equal" domestic partnerships, the State had, de facto, declared that homosexual relationships were somehow fundamentally different than those of opposite sex couples and that this would lead to increased discrimination and homophobia (Acción de la Inconstitucionalidad, 14-16). This is a stigma that would not only harm the individual participants of the domestic partnerships and subject them to violations of their rights, it also could harm the institution of the family.

None of these arguments should be construed as an endorsement of nationwide same sex marriage by the highest court. It was simply their argument for why they believed that Mexico City's legalization of marriage equality was legally prudent and acceptable. In fact, the court, while recognizing the responsibility of States to protect human rights, questioned whether or not this was even a matter of human rights. The court stated in their brief that "under this perspective, again it is demonstrated that the Federal District Legislative Assembly was not motivated by an objective rationale of questionable standard (Acción de la Inconstitucionalidad, 21). In other words, they did not believe that the State could solely rely upon the human rights arguments to justify their legalization of same sex marriage. The court went on to cite international law, The Universal Declaration of Human Rights, saying that "not even the Universal Declaration of Human Rights estimated as discriminatory act that any state law limiting marriage same sex" (Acción de la Inconstitucionalidad, 21). However, they stressed that

other rights justified the Federal District in pursuing this legislation, including the rights of the family as an institution as evidenced in this statement:

However, the right to family unity is inherent in the universal recognition of the family as the fundamental group of society, which should be given protection and assistance. This right is enshrined in various universal and regional instruments on human rights, which apply in the internal rules of the States to these instruments. (Acción de la Inconstitucionalidad, 31).¹²

The Court advocates the inclusion of gay rights in the modernist human-rights project only upon the condition that it serve an auxiliary purpose as well, that being the strengthening of the family as a social unit.

By appealing to the idea that functioning democracy requires the protection of citizens from infringements upon their rights, conservative elements in American society, especially bourgeois, white Republicans, have been convinced to support gay rights legislation and are willing to support gay rights efforts so long as they do not disrupt the socio-economic order of the nation (Hoover 2012). Yet, the forces of homophobia are still strong on the political right. By utilizing the specific discourses, activists have even convinced conservative actors in government to support gay-rights legislation. By appealing to the discourses of modernity and human rights, which virtually every democratic government pays homage to in the modern world, gay activists have won some surprising victories in Mexico. The PAN which has not historically support gay rights, was forced to pass a bill banning discrimination against LGB people in 2003 (de la Dehesa 2010, 157). It was under the administration of President Vicente Fox, a panista, that the Citizens Commission on Discrimination was established (de la Dehesa 2010, 4). He was forced into action by activists' pointing out inconsistencies in his belief in equal citizenship and the government allowing discrimination against queer and trans* people.

The bill passed by the PAN dominated government included some provisions that provided LGBTQ people in Mexico with legal protections from discrimination. Some of the actions described as discriminatory—and thus prohibited—by this bill included: the denial of access to private or public education, firing or denying employment to, setting pay differently or denying a promotion to, denying healthcare or health insurance coverage to, denying access to a public good or service, denying property rights to or taking them away based on one's sexual orientation (Ley Federal para Prevenir y Eliminar la Discriminación, Art. 9) Queer people are also protected in their rights to participate in the political process, run for office, and receive justice under the law (Ley Federal para Prevenir y Eliminar la Discriminación, Art. 9). The rights of individuals to romantic or sexual relationships, regardless of their respective genders or sexualities are also declared to be protected by this law (Ley Federal para Prevenir y Eliminar la Discriminación, Art. 9). Even the rights of all citizens to dress how they desire, without interference from authority figures, are protected with special emphasis being placed on those with different “sexual preferences,” gender identities, and gender performances (Ley Federal para Prevenir y Eliminar la Discriminación, Art. 9).¹³

In 2011, the same pressures which forced the PAN to adopt an anti-discrimination bill culminated in the adoption of new constitutional provisions which, amongst other things, codified the rights of queer people to be free from discrimination into Article One of the Constitution of the United Mexican States. The translation of the last paragraph of this section reads “all discrimination motivated by ethnic or national origin, gender, age, disability, social status, health status, religion, opinions, sexual preference, marital status or any other that threatens the dignity human and is intended to nullify or impair the rights and freedoms of individuals” (Constitución Política de los Estados Unidos Mexicanos, Art. 1).

Chapter Six: There is no right on rights

As this history is in its final stages, the United States Supreme Court is hearing the final arguments on two cases which will decide whether or not there is a federal, constitutional right to same-sex marriage. Although nobody can predict the court's decision, there is a pervasive sense of finality to the debate over gay rights. Republicans and Democrats alike are jumping on the bandwagon and it would appear that, for the first time in American history, being gay is, at least in mainstream opinion circles, "normal." The laws that have been implemented in the three cities I surveyed during the past decades are indicators that the argument that "normal" gay people, everyday citizens who just happen to be queer, are entitled to the exact same individual and family rights as other "normal" citizens has proven to be very salient, especially among those in positions of political power. A recent blog post in the New York Times hints at the subtle reality; "the greatest warriors for gay marriage have been the *average* gay people who came out to their families and friends and communities" (Brooks and Collins 2013). This sentiment speaks volumes about how public opinion shifted in favor of gay rights and how the government came to decide that gay rights (especially marriage equality) would be a sufficient answer to the "queer problem." The queer revolution came and went, and although we may believe otherwise, we didn't change society. Society changed us. We began to use the language of rights and families to advocate for our own space within the modernist project.

Despite religious and cultural resistance to gay rights, the strategy of employing a liberal and modernist discourse has been effective in galvanizing political leaders to action. "The independent normative force of modernist narratives of human rights, universalism and progress" combined with the medical vindication of homosexuality's "naturalness" allowed gay rights advocates to portray their community as an underrepresented minority being denied access to its

rights by an oppressive majority (de la Dehesa 2010, 3). Cultural change is certainly slow, and activists have often been leery of waiting for public opinion to shift on homosexuality. By appealing directly to the ideologies of their elected leaders, they hoped to change public policy and law and in turn, force changes that would eventually create a more favorable public image of gay men. In a letter to an Italian activist, Roberto Mascarenhas wrote:

“Here in Brazil, things were always done from the top down. The masses were never the subject of action, but they have always been the object of action. In light of this, I believe (and evidently, I would be wrong) that the important thing is to win over the elite and the “intelligentsia” [...] you might argue that laws do not change the social mentality and I would agree, but only in part. Laws do not change the social mentality, but they contribute decisively to that change.” (de la Dehesa, 1)

Thus, the decision was made by activist organizations to focus on the elite. Indeed “from the movement’s inception, appeals framing sexual rights as an extension of both human rights and liberal citizenship formed an important strand in activists’ discourse,” yet recently, an extraordinary amount of resources, attention, and money has been lavished upon causes which appeal directly to modernist ideals of citizenship such as marriage equality campaigns, campaigns for anti-discrimination ordinances and laws, and adoption laws (de la Dehesa 2010, 132). It is apparent that gay rights discourses have fueled the recent changes in government policy on sexual orientation.

Another article written recently about the pending cases at the Supreme Court said that “Americans who are allowed by law to fall in love, share their lives and raise children together will, in the not too distant future, be allowed to get married” (von Drehle 2013). Undoubtedly, the author is correct. However, this dictate fails to even consider the possibility that there might be those couples who do not want to fall in love, to raise children, to work 9 to 5 jobs and have

homes in suburbs. It presupposes that all queer people want to do is be just like straight people, which may not necessarily be the case for everyone.

In chronicling the starker realities behind the discourses of the gay rights movement, I am not attempting to expose some a government conspiracy to subjugate queer people to heteronormativity. The ineptitude of the American government alone should prove that the normalization of queer people is not a diabolical scheme. Nor do I wish to make a value judgment on the gay rights movement. As problematic as it may be, it has had tangible benefits for millions across the globe, including myself. In the earliest days of sexual politics, “sexuality was handled, if it were handled at all, as an individual need or biological function [...] and same-sex relationships were treated as a form of deviance, pathology, or mental illness” (Herdt, 20). Queer people, as a result of laws such as the anti-discrimination law passed in Mexico City or the hate crimes law passed in California, are given many of the same rights associated with citizenship. In fact, some might even argue that the government has bestowed citizenship upon these groups, who have been historically left out.

However, citizenship is not just something that is bestowed upon one by his or her government. In order to be a full citizen, one must have equal treatment by his peers. While the government can institutionalize changes to policy and law, it cannot force changes in culture or understanding. For example, the intentions of anti-discrimination and anti-hate crime legislations are to create a society that is safer for queer people and more tolerant of homosexual behavior and gay subjectivities. This is an attempt by the government to remove the barriers that queer people face to exercising their human rights and provide them with ostensibly full citizenship. Unfortunately, “tolerance” itself is a problematic concept. “Indeed the very notion of ‘tolerance’—whether of religious or sexual nonconformity—implies objectification, or

minoritization, of the ‘Other’” and “‘being allowed to live in peace’ falls far short of enabling conditions for full, democratic citizenship and ‘free exercise of differences’” (Jakobsen and Pellegrini 2003, 74).

Furthermore, many queer activists see the conflation of all homosexualities into one homosexuality as problematic. It denies individual experiences and sensibilities in favor of a common identity, which is most often dominated by the most powerful men in the room and is likely still tinged by racism, classism, and Euro-centrism. Queer activists have long been worried that gay-rights legislation, especially marriage-equality laws, simply co-opt queer people into a patriarchal, racist, capitalist, and heteronormative system and forcibly assimilate them into a regime which may not allow them actual freedom.

This isn’t to say that there are not queer activists who believe that government can have a role to play in eliminating institutions of homophobia. There are, but they are skeptical of the rights-centric approach. Even in the most cynical of queer thinkers, Michel Foucault (1998, 6) notes that it is exciting and vindicating “for us to define the relationship between sex and power in terms of repression.” These fringe activists have recognized the challenges associated with simply assuming that one is “free” because the law declares one to be free. By declaring in one’s Constitution that queer people have rights, as happened in Mexico, one ignores the existence serious social barriers to success posed by more subtle forms of homophobia, or forms of homophobia that are more closely linked to one’s refusal to conform to the expectations of a “normal” gender performance, a “normal” relationship structure, or even a “normal” portrayal of one’s own sexuality.

It will take more than just a declaration that queer people have rights to alleviate the disparities that queer people face in terms of health and happiness. There are those who argue that the answer to the problems of gay rights are revolutionary politics and the continued advocacy of complete freedom for queer people. Yet when power is challenged, be it the homophobia of the past or the subtler problems associated with discourse of human rights, the challenger knows that they “are being subversive and we ardently conjure away the present and appeal to the future, whose day will be hastened by the contribution we believe we are making. Something that smacks of revolt, of promised freedom, of the coming age to a different law, slips easily into this discourse on sexual oppression” (Foucault 1990, 6-7). It is quite possible that this is the primary issue. In advocating for such intangible and immeasurable concepts as “tolerance,” “freedom,” and “citizenship” for queer people, we could possibly be missing out on the pragmatic potential for tangible change.

Michel Foucault’s (1978, 86) dictate that “power is tolerable only on condition that it mask a substantial part of itself,” captures the essence of the postmodern critique of the gay-rights movement. This is apparent in the analysis of the legislation from our “progressive” case studies. In every city, domestic partnerships and civil unions are only accessible for those queers who choose to participate in monogamous, heteronormative relationships. In order to be protected from discrimination based on one’s sexual orientation, in most cases a person must choose between a set of pre-scripted identities which might not reflect one’s own personal identity and beliefs or sense of self. It is true that in tying the liberation of queer people to the discourses of human rights queer people have been subjugated to living by the rules of the governing elite and have not been “liberated.”

However, what is most problematic about this postmodern critique is its lack of proposed policy. It seems as though the postmodern critics of the gay rights movement are focused on problematizing government and forget its ability to be proactive in improving the health, happiness, and wellness of gay men as a constituency. While the identities of gay men are personal and linked to other factors including economic and cultural context, policies can be designed to benefit gay men as a specific constituency. As Halperin (2012, 12) points out, gay culture and its derivative, gay identity, crystallize as responses to a homosexual existence in a heteronormative world. This isn't to say that Halperin believes in an essential homosexual identity or the homosexual "species."¹ It is unlikely that Halperin would support the narrow identity categories applied to sexual orientation in the California hate crimes law or São Paulo's anti-discrimination law. Gay culture is dynamic and queer identities are fundamentally personal. However, the very notion of queerness relies on a normative cultural structure that one feels opposed to; "that distinctively *gay way of being*, moreover, appears to be rooted in a particular *queer way of feeling*" (Halperin 2012, 12). Halperin notes that one of his peers, Barry Adams, once complained to him that postmodern queer theory is flawed because of its failure to find commonalities between different gay identities (Halperin 2012, 48). Does the common experience of not being a heterosexual in a heteronormative world not at least provide some common ground? This is also true across cultural boundaries. "It is too easy simply to note that the pervasive gender system operating in the United States is constructed differently from that in Brazil or Latin America and that the active/passive organization of sexual life described above varies notable from homosexual behavior in Western Europe and the United States. By operating with this bipolar framework, one can easily create a false "other" and thereby erase the complexities and inconsistencies of an overarching model" (Green 1999, 8).

My research has demonstrated that many of the policies advocated for by the gay rights movement are simply minor alterations of the status quo. It has also revealed that the way in which the discourse advocating for gay rights has been framed is limiting as to the kinds of identities which are considered “normal” and thus eligible for full citizenship. The government has normalized homosexuality; however only specific homosexualities are tolerable. Relationships between members of the same sex are beginning to be recognized, so long as they are “committed” and “mutually responsible” and follow the prescribed form and structure of a serious relationship according to their political institutions. Gay individuals have been recognized as a group that are “normal” and “natural” enough to receive protection from employment discrimination and hate crimes. Whether or not these protections apply to the “queers that gay pride is ashamed of” remains to be seen; and these protection do little to rectify the unfortunate reality that queer people are more likely to contract HIV, deal with substance abuse, and feel so unsafe at their high schools that they drop out (Center for Disease Control 2013) (Center for Disease Control 2010) (Lambda Legal).

Nonetheless, the gay rights agenda had brought attention to queer issues. And, some of the policy results that I discovered are surprisingly inclusive. In Mexico, a conservative government passed a law protecting the rights of individuals to express their gender through whatever dress they believe necessary. In California, schools are now required to include the contributions of LGBTQIA Americans in history curricula. This is extremely important to combating homophobia. Its most obvious effect is the continued normalization of gay people and possibly even queerness. However, it is even more important to those queers in the classroom who are suffering from low self-esteem and feeling of not belonging. “Unlike the members of minority groups defined by race or ethnicity or religion, [queer people] cannot rely on their birth

families to teach them about their history or their culture. They must discover their roots through contact with the larger society and the larger world (Halperin 2012, 7).

There exists the possibility that government policy can still be a positive influence on the lives of queer subjects. It requires grassroots pressure and educational campaigns to build public support for programs like Brasil Sem Homofobia and lobbying efforts so that government programs can be put into place to combat homophobia, give queer people access to resources, and in turn provide more support for the grassroots movements. Since 2004, the Brazilian government has partnered with LGBTQIA NGOs to create and fund social programs designed to eliminate homophobia in Brazilian society and support queer Brazilians. Brasil Sem Homofobia has specific programs that incorporate similar measure to the Fair Education Act in California into the national curricula of Brazilian public schools and other measures designed to fight racism (Brasil Sem Homofobia). The goal of this project, in the words of its creators, is to “to promote the citizenship of gays, lesbians, travestis, transgender people, and bisexuals, advocate for their equal rights and the fight against homophobic violence and discrimination, respecting the specificity of each of these population groups” (Brasil Sem Homofobia, 11). Notice that the language of human rights, citizenship, and equality is still being utilized, but now the efforts go beyond fighting for changes in legal definitions and the rights bestowed to individuals from the government and include social programs designed to empower individuals to overcome the obstacles posed by homophobia and transphobia. Of course, the government still holds the power to decide which programs to implement and how to do so. Yet, if there is anything Foucault has taught us, it is that power is unavoidable and authority will always exist, in one way or another.

For programs like Brasil Sem Homofobia to exist, the grassroots pressure has to be strong and activists must be vigilant in their application of pressure on the government to act. Legal

equality may not always be enough, and the activists have to know that power will only respond to equal applications of power. In order to be successful in maintaining grassroots connections with the government, the activists must “keep one foot in the electoral arena and another in civil society” (de la Dehesa 2010, 70). Right now, it appears that the normalization of queerness, the equivocation of gay rights as civil rights, and the appeal to the language of the family as a cohesive unit integral to society have created a discourse that is the most effective in bringing about policy outcomes. It also serves as a powerful discursive tool to gain the support of public opinion.

The results of this research are not as conclusive as I had hoped they would be. In the end, my hypothesis that the gay rights movement would as limiting as it is liberating was correct. Every policy put into place on marriage equality and civil unions restricted the types of relationships eligible to be deemed legitimate by the power of the state. Many of the laws on hate crimes and discrimination had strict interpretations of what constitutes a hate crime or discriminatory act. Principally, I was correct in my assertion that, although gay rights has “normalized” homosexuality to a certain extent, the absolute freedom that was its end goal in the eyes of many queer people has not been achieved. I doubt it ever will be. Power is pragmatic and it operates in a surprisingly uniform way. We know this because, although the policies I analyzed were implemented in three nations with different cultures and histories, including their historical solutions to the “queer problem,” their policy responses were shockingly similar.

In the future, it might be interesting to see if the more radical policies being proposed, policies such as the Fair Education Act in California and Brasil Sem Homofobia, are having a more tangible effect in the fight against homophobia. Regardless, the justification for these policies still is fixed firmly within the discourse used by the gay rights movement for the past

few decades and, as the current fervor around marriage equality in the United States demonstrates, that discourse is winning. This project had many shortcomings, most principal among them being time. Not every law concerning sexual orientation may use language similar to that of the bills and laws and court decisions that were analyzed. However, the fact that there was so much similarity between these three case studies is more than ample evidence to demonstrate that there has been one specific discourse used to advocate gay rights and that it has been effective in various settings. This project has, without a doubt, illuminated the rationale behind the implementation of gay rights legislation throughout the past decade and the discourses which have influenced the gay rights movement, both internally and externally.

The Mexican queer activist Max Mejía, in an article from 1985, declared that the time had come to say “bye to the ‘chimerical and impassioned declarations of the early years’” and realize “our desires for full liberation here and now” (de la Dehesa 2010, 146). Like it or not, for queer people to combat homophobia and improve our social standing, we must embrace the tactics available to us to subvert and overcome power. “We cannot dispense with the language of human rights, but neither can we accept it as fully adequate or complete” (Corrêa, Petcheskey, & Parker 2008, 223). Indeed, it is important to apply this postmodern lens to the gay rights movement, its discourses, and its policies. The idea of “normal” is problematic and the demand that queer people become “normal” to be entitled to citizenship rights is even more disturbing. However, “we have gained [...] a space for social tolerance and remarkable ground to discuss our rights” and it would be imprudent not to use it. We have changed what normal meant before, perhaps all that need be done is to change it again, and continue working to change it for as long as we can.

“What was formed was a political ordering of life, not through an enslavement of other, but through an affirmation of self” (Michel Foucault 1978, 12).

Footnotes

Chapter 1

1. Queer, per the definition in the most recent edition of Merriam-Webster's dictionary, means "differing in some odd way from what is usual or normal" (Merriam-Webster, 2013). When used by the LGBTQIA (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual) community and those who research and study sex and sexuality, queer has come to mean a sexual orientation which deviates from the expected norm (i.e. exclusive heterosexuality). This includes exclusive homosexuality, bisexuality, pansexuality, "heteroflexibility," and the myriad sexualities that exist. For the purposes of this thesis, the word queer and its derivatives (e.g. queerness) will carry this same connotation. It is important to note that I do not believe that queerness is somehow a deviation from "what is usual or normal." In fact, I hope that this thesis will leave the reader questioning just how wise it is to conceptualize identities—sexual or otherwise—in terms of normal and not normal. If there is such a thing as "normal" in regards to personal sexual orientations, the concept of queerness is likely as close as it gets. The word is imbued with a postmodern irony and cunning self-awareness that seeks to expose the folly of "normal" by embracing one's own personal abject abnormality. There are hundreds and thousands of books and articles, blogs, films, and artistic endeavors which deal with this subject. For those new to queer theory, I would recommend Michael Warner's *The Trouble with Normal*, as the best gateway to the discipline.
2. While the three main case studies within this book are the cities of São Paulo, San Francisco, and México D.F., much of the analysis that I provide examines state laws that affect these cities and national court cases that have had an effect on their queer communities. The purpose of this thesis is not to examine regional particularities, but rather similarities between difference places in terms of dialogue.
3. The Stonewall Riots were a response to a police raid on the Stonewall Inn, a gay bar in New York City's Greenwich Village. For more information on the Stonewall Riots I would recommend reading *Stonewall: The Riots That Sparked the Gay Revolution* by David Carter.
4. San Francisco is the fourth largest city in the State of California, São Paulo city is the capital of São Paulo State in Brazil, and Mexico City is synonymous with the Federal District of Mexico.

Chapter 2

1. Modernism, for the purposes of this thesis, means a cultural and philosophical movement which strives to continue to "progress" human civilization through an embrace of science and rationalism and a rupture with tradition. For further reading on Modernism consult William Everdell's *The First Moderns: Profiles in the Origins of Twentieth Century Thought*.
2. Machismo is a cultural practice prevalent in Latin America and Europe which dictates a strict set of social roles and rules by which "true men" must abide.
3. Homosocial is a word that means social relations occurring between members of the same sex or gender. It does not necessarily presume homoeroticism to be part of those relations.
4. Classical Liberalism is a political philosophy which holds dear the belief that human beings are endowed with inalienable rights (e.g. the right to life, the right to property) and that the duty of government is to protect those rights.
5. Postmodernism, for the purpose of this essay, is a blanket term used to describe a number of philosophical and cultural movements that were seen as reaction to Modernism. In its purist form, postmodern describes a sensibility which is critical, skeptical, and dedicated to re-evaluating the assumptions of Modernism. It is often associated with Deconstructionism and Post-structuralism which use similar tactics to break down and evaluate existing structures and dialogues.

Chapter 4

1. The text in Portuguese reads: "Toda e qualquer forma de discriminação por orientação sexual, prática de violência ou manifestação que atente contra a cidadã e o cidadão heterossexual, homossexual, bissexual, travesti ou transexual será punida na forma da presente lei."
2. Travesti is a Brazilian word that means a transsexual who had not undergone genital reassignment surgery and, thus, is still anatomically male. Some travestis identify as female, while other take on the social role of a third gender.
3. The text in Portuguese reads: "Para os fins do disposto na presente lei, entende-se por orientação sexual o direito do indivíduo de relacionar-se, afetiva e sexualmente, com qualquer pessoa, independente de sexo, gênero, aparência, vestimenta ou quaisquer outras características."

4. The full text of Chapter 4 in Portuguese reads thusly:
 - I - impedir ou dificultar o ingresso ou permanência em espaços públicos, logradouros públicos, estabelecimentos abertos ao público e prédios públicos;
 - II - impedir ou dificultar o acesso de cliente, usuário de serviço ou consumidor, ou recusar-lhe atendimento;
 - III - impedir o acesso ou utilização de qualquer serviço público;
 - IV - negar ou dificultar a locação ou aquisição de bens móveis ou imóveis;
 - V - criar embaraços à utilização das dependências comuns e áreas não privativas de qualquer edifício, bem como a seus familiares, amigos e pessoas de seu convívio;
 - VI - recusar, dificultar ou preterir atendimento médico ou ambulatorial;
 - VII - praticar, induzir ou incitar através dos meios de comunicação a discriminação, o preconceito ou a prática de qualquer conduta vedada por esta lei;
 - VIII - fabricar, comercializar, distribuir ou veicular símbolos, emblemas, ornamentos, distintivos ou propaganda que incitem ou induzam à discriminação, preconceito, ódio ou violência com base na orientação sexual do indivíduo;
 - IX - negar emprego, demitir, impedir ou dificultar a ascensão em empresa pública ou privada;
 - X - impedir ou obstar o acesso a cargo ou função pública ou certame licitatório;
 - XI - preterir, impedir ou sobre-taxar a utilização de serviços, meios de transporte ou de comunicação, consumo de bens, hospedagem em hotéis e estabelecimentos congêneres ou o ingresso em espetáculos artísticos ou culturais;
 - XII - realizar qualquer forma de atendimento diferenciado não autorizado por lei;
 - XIII - inibir ou proibir a manifestação pública de carinho, afeto, emoção ou sentimento;
 - XIV - proibir, inibir ou dificultar a manifestação pública de pensamento.
 - XV - outras formas de discriminação não previstas na presente lei (Article 1, Lei N.º440).
5. The text in Portuguese reads:
 - I - advertência por escrito;
 - II - multa, no valor de R\$ 1.000,00 a R\$ 3.000,00 (mil a três mil reais);
 - III - Suspensão temporária do alvará de funcionamento;
 - IV - Cassação do alvará de funcionamento;
 - V - Proibição de contratar com a administração. (Article 2, Lei N.º440).
6. The text in Portuguese reads: “será punida, nos termos desta lei, toda manifestação atentatória ou discriminatória praticada contra cidadão homossexual, bissexual ou transgênero”
7. The full text in Portuguese reads:
 - I - praticar qualquer tipo de ação violenta, constrangedora, intimidatória ou vexatória, de ordem moral, ética, filosófica ou psicológica;
 - II - proibir o ingresso ou permanência em qualquer ambiente ou estabelecimento público ou privado, aberto ao público;
 - III - praticar atendimento selecionado que não esteja devidamente determinado em lei;
 - IV - preterir, sobretaxar ou impedir a hospedagem em hotéis, motéis, pensões ou similares;
 - V - preterir, sobretaxar ou impedir a locação, compra, aquisição, arrendamento ou empréstimo de bens móveis ou imóveis de qualquer finalidade;
 - VI - praticar o empregador, ou seu preposto, atos de demissão direta ou indireta, em função da orientação sexual do empregado;
 - VII - inibir ou proibir a admissão ou o acesso profissional em qualquer estabelecimento público ou privado em função da orientação sexual do profissional;
 - VIII - proibir a livre expressão e manifestação de afetividade, sendo estas expressões e manifestações permitidas aos demais cidadãos. (Article 2, Lei Nº 10.948)

O texto da Carta de 1988, confirmando a vocação democrática nacional e em reforço à vertente de afirmação dos direitos humanos fundamentais no Estado Brasileiro, é pródiga em manifestações nesse sentido: “Art. 3º. Constituem objetivos fundamentais da República Federativa do Brasil:

- I – constituir uma sociedade livre, justa e solidária;
- II – garantir o desenvolvimento nacional;
- III – erradicar a pobreza e a marginalização e reduzir as desigualdades sociais e regionais;
- IV – promover o bem de todos, sem preconceitos de origem, raça, sexo, cor, idade e quaisquer outras formas de discriminação.”

8. The text in Portuguese reads: “A fim de fundamentar a arguição, sustenta que o tratamento jurídico discriminatório muitas vezes conferido às uniões homoafetivas não encontra respaldo na Constituição Federal, que tem como pilares “o direito à igualdade (art. 5º, caput); o direito à liberdade, do qual decorre a autonomia da vontade (art. 5º, II); o princípio da dignidade da pessoa humana (art. 1º, IV); e o princípio da segurança jurídica (art. 5º, caput)” (fl. 2)”
9. The text in Portuguese reads: “nenhum princípio ou valor protegidos pela Constituição são promovidos por meio do não reconhecimento das uniões afetivas desenvolvidas entre pessoas do mesmo sexo. Ao contrário, o que se produz é uma violação direta ao propósito constitucional de se instituir uma sociedade pluralista e efratária ao preconceito”

10. The text in Portuguese reads: “todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade”
11. The text in Portuguese reads: “Nós, representantes do povo brasileiro, reunidos em Assembléia Nacional Constituinte para instituir um Estado Democrático, destinado a assegurar o exercício dos direitos sociais e individuais, a liberdade, a segurança, o bem-estar, o desenvolvimento, a igualdade e a justiça como valores supremos de uma sociedade fraterna, pluralista e sem preconceitos, fundada na harmonia social e comprometida, na ordem interna e internacional, com a solução pacífica das controvérsias, promulgamos, sob a proteção de Deus, a seguinte Constituição da República Federativa do Brasil.”
12. The text in Portuguese reads: “Com efeito, pode-se afirmar que o tratamento diferenciado entre as entidades familiares expressamente previstas na Constituição Federal e as uniões homoafetivas não apresenta justificativa plausível, sob a ótica do princípio da igualdade. É ofensivo ao senso comum – e à força normativa do princípio da isonomia – que, no caso do art. 19 do Decreto-lei nº 220/75, possa ser deferida licença para aquele companheiro ou cônjuge para tratar da doença de seu consorte, sendo impossível ao que mantém união homoafetiva estável – cuja relação se funda nos mesmos pressupostos de liberdade e de afeto que as outras uniões – similar tratamento.”

Chapter 5

1. The gay rights movement in Mexico, unlike other countries, has had a surprising presence in certain rural areas as well. I recommend consulting *Queering the Public Sphere in Mexico and Brazil* by Rafael de la Dehesa.
2. The full text in Spanish reads:
 Artículo 2.- La Sociedad de Convivencia es un acto jurídico bilateral que se constituye, cuando dos personas físicas de diferente o del mismo sexo, mayores de edad y con capacidad jurídica plena, establecen un hogar común, con voluntad de permanencia y de ayuda mutua.
 Artículo 3.- La Sociedad de Convivencia obliga a las o los convivientes, en razón de la voluntad de permanencia, ayuda mutua y establecimiento del hogar común; la cual surte efectos frente a terceros cuando la Sociedad es registrada ante la Dirección General Jurídica y de Gobierno del Órgano Político-Administrativo correspondiente.
3. The full text in Spanish reads:
 La Sociedad de Convivencia termina:
 I. Por la voluntad de ambos o de cualquiera de las o los convivientes.
 II. Por el abandono del hogar común de uno de las o los convivientes por más de tres meses, sin que haya causa justificada.
 III. Porque alguno de las o los convivientes contraiga matrimonio o establezca una relación de concubinato.
 IV. Porque alguno de las o los convivientes haya actuado dolosamente al suscribir la Sociedad de Convivencia.
 V. Por la defunción de alguno de las o los convivientes.
4. The text in Spanish reads: “matrimonio es la unión libre de dos personas para realizar la comunidad de vida, en donde ambos se procuran respeto, igualdad y ayuda mutua. Debe celebrarse ante el Juez del Registro Civil y con las formalidades que estipule el presente código.”
5. The full text in Spanish reads: De tales argumentos se desprende claramente que no cumplió con el principio de legalidad, por lo que hace a la motivación de que debían estar investidas las normas que, en la presente acción de inconstitucionalidad, se combaten, ya que no acreditó qué derecho fundamental se restringía a las personas con orientaciones o preferencias por otras del mismo sexo antes de la reforma ni de qué forma la legislación ordinaria del Distrito Federal, antes de la reforma, generaba discriminación, violencia, prejuicios, exclusión o anulación de igualdad. Señala que en el Estado mexicano, en materia de sexualidad, no existe norma jurídica alguna que fomente la discriminación, la violencia, los prejuicios, la exclusión o que vede, de modo alguno, la libertad sexual de las personas, de tal suerte que todos los individuos que se encuentren en territorio nacional tienen la garantía de libertad e igualdad, ya que no se restringen los derechos por motivo de género, condición social, económica o de salud, opiniones, creencias, religión, preferencias o estado civil. En el caso, la demandada no acredita, mediante una razonabilidad objetiva, de qué modo la institución jurídica del matrimonio, hasta antes de la reforma impugnada, violaba el principio de libertad e igualdad de las personas con preferencias por otras del mismo sexo, aunque aduzca como causa de discriminación y menoscabo de los derechos humanos de personas con preferencias por otras del mismo sexo que, antes de la reforma, no tenían acceso a la institución jurídica del matrimonio y que, por ello, se vedaba su protección, por lo que, al formar una vida en común, dicha unión carecía del reconocimiento civil y protección de sus derechos. Contrario a lo que, en el dictamen respectivo, se aduce, las personas del mismo sexo que optaban por una vida en común, sí tenían en el Distrito Federal la protección de derechos, como se desprende de la Ley de Sociedades de

Convivencia del Distrito Federal, que otorga reconocimiento legal a aquellos hogares formados por personas sin parentesco consanguíneo o por afinidad y la cual contempla y determina derechos y obligaciones para los miembros de la sociedad de convivencia, de los que carecían muchas personas con una vida en común antes de la creación de esta ley. Por ello, no existe una razonabilidad objetiva en la emisión de la norma que se combate, pues los derechos de las personas del mismo sexo que deseen la protección de los derechos y obligaciones derivados de su unión, ya tenían el reconocimiento de la legislación civil local, a través de la figura jurídica que el propio legislador ordinario consideró idónea para tal fin. Si el objeto de la reforma que se impugna es la no discriminación y la protección de las personas del mismo sexo que deseaban unirse legalmente y obtener la protección de sus derechos, entonces la norma combatida carece de la debida motivación razonable y objetiva, porque ya existía tal protección a través de la sociedad en convivencia, que es equiparable al concubinato, por tanto hacer asequible el matrimonio civil a personas del mismo sexo no es una medida legislativa idónea, apta o susceptible para alcanzar un fin ya logrado para dicho sector social y para el ejercicio pleno de su derecho fundamental a fundar una familia.

6. The text in Spanish reads: El artículo 4º, primer párrafo, de la Constitución Federal, establece: “El varón y la mujer son iguales ante la ley. Ésta protegerá la organización y el desarrollo de la familia”. Esta disposición fue producto de la reforma publicada en el Diario Oficial de la Federación, el treinta y uno de diciembre de mil novecientos setenta y cuatro. De los antecedentes legislativos de la citada reforma, se desprende que, entre los diversos motivos que tuvo el Constituyente Permanente, al reformar el artículo 4º de la Constitución Federal, se encuentra el de garantizar la protección integral de la familia, como institución de orden público. Según se desprende de la exposición de motivos y los dictámenes de las Cámaras de Diputados y de Senadores, el interés del Estado mexicano se centra en fortalecer las posibilidades del ser humano y su realización plena a través de la familia, sobre bases de igualdad operante y legalmente protegida. Así, la familia se debe conceptualizar como la decisión intocable de solidificar las posibilidades de relación entre sus miembros y crear las condiciones sociales, culturales, económicas y políticas para que las mismas sean posibles, como base indispensable de una vida social a la altura y medida de la persona. En este sentido, la familia se instituye para cumplir un objetivo común y su desarrollo. La protección que la Constitución Federal establece respecto de la familia en su artículo 4º se proyecta a la construcción de actitudes personales y sociales útiles y necesarias, al resguardo de todos los elementos que contribuyan de manera eficaz y realista a su protección, tomando en cuenta la justa relación entre sus integrantes, y a la abierta colaboración entre las mismas y con la sociedad. En tales circunstancias, se instituye la protección legal y la organización y desarrollo de la familia, concebida como modelo ideal por el Constituyente Permanente, a la conformada por padre, madre e hijos. (Acción de la Inconstitucionalidad, 2-3).
7. The text in Spanish reads: Ahora bien, el matrimonio es una institución de carácter público e interés social, por medio de la cual -al menos también en el Distrito Federal, hasta antes de la reforma que se impugna- un hombre y una mujer deciden compartir un proyecto de vida para la búsqueda de su realización personal y la fundación de una familia, en principio, a través de su propia descendencia. El matrimonio es una institución de orden público, porque el interés que en él se tutela no es el particular o individual de quienes lo forman, sino un interés superior, el de la familia, siendo ésta la célula de la sociedad, el matrimonio es también de orden y trascendencia social y no sólo privada. (Acción de la Inconstitucionalidad, 4)
8. The text in Spanish reads: No pasa inadvertido que si bien el Constituyente Permanente estimó como modelo ideal a la familia conformada por un padre, una madre y los hijos, en la realidad social, pueden existir familias conformadas de manera distinta. Al respecto, la protección de los derechos y la regulación de las obligaciones surgidos como resultado de una relación familiar, deben estar tutelados por instituciones jurídicas idóneas creadas por el legislador ordinario, dentro del marco señalado en el artículo 4º constitucional, cuyo modelo ideal ha sido descrito por el Constituyente Permanente. Por tanto, si el modelo ideal de familia, planteado por el Constituyente Permanente para los fines del Estado mexicano es el conformado por padre, madre e hijos, consecuentemente, la institución idónea deberá ser el matrimonio, porque esta figura, dentro del cúmulo de derechos y obligaciones que tutela, encuentra los relativos a la reproducción como medio para fundar la familia; sin embargo, habrá familias en las que la reproducción no es el principal objetivo y, por ello, aún así existe protección legal mediante figuras jurídicas como el concubinato o la sociedad de convivencia
9. The text in Spanish reads: Por otra parte, estudios socio-antropológicos han confirmado, como un postulado incuestionable, que la familia, en cualquiera de sus manifestaciones, constituye la célula básica de la sociedad humana. (Acción de la Inconstitucionalidad, 5)
10. The text in Spanish reads: Las experiencias y vivencias de nuestro entorno confirman la existencia de una profunda crisis en la estructura familiar y su dinámica. Al Estado corresponde, por disposición del artículo 4º constitucional, el fortalecimiento y protección de la familia, la atención, prevención y solución de la problemática jurídica de la familia, a

través de las instituciones especializadas que al efecto ha instituido. Lo que demanda la creación de instrumentos jurídicos que protejan, que ayuden a la conservación, protección y desarrollo de la familia. Esa exigencia social de que sea el Estado, a través de la emisión de cuerpos legales, el que promueva y fortalezca el desarrollo de la familia, es un fundamento de la sociedad y un espacio fundamental para el desarrollo integral del ser humano, basándose en el respeto de los derechos fundamentales y las relaciones equitativas entre sus miembros y velando, especialmente, por aquellas familias que se encuentran en situaciones de vulnerabilidad, por extrema pobreza, riesgo social o cualquier otra circunstancia que las coloque en tal situación.

Asimismo, el Estado debe adoptar políticas y acciones para lograr el apoyo y asistencia para el cumplimiento de los fines de la familia. Es por ello que debe tener atención prioritaria el desarrollo del vínculo familiar. (Acción de la Inconstitucionalidad, 6)

11. The listed elements include:

Reconocer el matrimonio y el concubinato entre personas del mismo sexo, argumentando congruencia con el artículo 1° constitucional, que veda cualquier posibilidad de discriminación por razón de preferencias, Emitir la norma con base en la legislación internacional de derechos humanos, que prohíbe la discriminación en lo relativo al pleno disfrute de todos los derechos humanos, civiles, culturales, económicos, políticos y sociales, Justificar su emisión por el respeto a los derechos sexuales, a la orientación sexual y a la identidad de género, para la realización de la igualdad entre hombres y mujeres y porque los Estados deben adoptar todas las medidas apropiadas para eliminar los prejuicios y las prácticas que se basen en la idea de la inferioridad o superioridad de cualquiera de los sexos o en roles estereotipados para hombres y mujeres. El reconocimiento de la comunidad internacional al derecho de las personas a decidir libre y responsablemente en asuntos relacionados con su sexualidad, incluyendo la salud sexual y reproductiva, sin sufrir coerción, discriminación, ni violencia, establecido -según la autoridad emisora de la norma- en los Principios de Yogyakarta, de dos mil seis, sobre la aplicación de la legislación internacional de derechos humanos, en relación con la orientación sexual y la identidad de género, Ensanchar libertades, lo cual trae aparejada una cultura de respeto y tolerancia, acordes a la dignidad humana, Garantizar los derechos humanos en el Distrito Federal, Ser consistente con un importante número de instrumentos internacionales en materia de derechos humanos, Aun cuando se emitió en el Distrito Federal la Ley de Sociedades de Convivencia, persiste el estigma, la desigualdad y la restricción de derechos, al impedirse el acceso a la institución del matrimonio por personas del mismo sexo, La nueva conceptualización matrimonial tiene como fin garantizar el derecho en igualdad y en equidad a toda la ciudadanía y la reforma sólo pretende reconocer un derecho, sin vulnerar el de nadie más (Acción de la Inconstitucionalidad, 7-8).

12. The full text in Spanish reads: Ahora bien, el derecho a la unidad familiar es inherente al reconocimiento universal de la familia, como el grupo fundamental de la sociedad, al que se le debe dar protección y asistencia. Este derecho está consagrado en diversos instrumentos universales y regionales de derechos humanos, los cuales se aplicarán en las disposiciones internas de los Estados que suscriban dichos instrumentos.

13. Here is a full list of the protections guaranteed by the Law for the Prevention and Elimination of Discrimination:
CAPÍTULO II

MEDIDAS PARA PREVENIR LA DISCRIMINACIÓN

Artículo 9.- Queda prohibida toda práctica discriminatoria que tenga por objeto impedir o anular el reconocimiento o ejercicio de los derechos y la igualdad real de oportunidades. A efecto de lo anterior, se consideran como conductas discriminatorias: [There shall be no discriminatory practice that serves to prevent or nullifying the recognition or exercise of the rights and equality of opportunities. To effect the foregoing, are considered as discriminatory behavior:]

I. Impedir el acceso a la educación pública o privada, así como a becas e incentivos para la permanencia en los centros educativos, en los términos de las disposiciones aplicables; [Prevent access to public or private education, as well as scholarships and incentives to stay in the schools, in the terms of the relevant provisions;]

II. Establecer contenidos, métodos o instrumentos pedagógicos en que se asignen papeles contrarios a la igualdad o que difundan una condición de subordinación; [Set contents, methods or tools that are assigned equal roles or contrary to disseminate a condition of subordination;]

III. Prohibir la libre elección de empleo, o restringir las oportunidades de acceso, permanencia y ascenso en el mismo; [Prohibit the free choice of employment, or restrict the opportunities of access, retention and promotion in the same;]

IV. Establecer diferencias en la remuneración, las prestaciones y las condiciones laborales para trabajos iguales; [Set differences in pay, benefits and working conditions for equal work;]

V. Limitar el acceso a los programas de capacitación y de formación profesional; [Limit access to training programs and vocational training;]

VI. Negar o limitar información sobre derechos reproductivos o impedir el libre ejercicio de la determinación del número y espaciamiento de los hijos e hijas; [Denying or limiting information on reproductive rights or prevent the free exercise of determining the number and spacing of their children;]

VII. Negar o condicionar los servicios de atención médica, o impedir la participación en las decisiones sobre su tratamiento médico o terapéutico dentro de sus posibilidades y medios; [Deny or condition the health care services, or prevent participation in decisions about their medical or therapeutic treatment within their means and means;]

VIII. Impedir la participación en condiciones equitativas en asociaciones civiles, políticas o de cualquier otra índole; [Prevent participation fairly in civil associations, political or otherwise;]

IX. Negar o condicionar el derecho de participación política y, específicamente, el derecho al sufragio activo o pasivo, la elegibilidad y el acceso a todos los cargos públicos, así como la participación en el desarrollo y ejecución de políticas y programas de gobierno, en los casos y bajo los términos que establezcan las disposiciones aplicables; [Deny or condition the right of political participation and, specifically, the right to vote or stand, eligibility and access to all public offices, as well as participation in the development and implementation of government policies and programs, in cases and under the terms established by the applicable provisions;]

X. Impedir el ejercicio de los derechos de propiedad, administración y disposición de bienes de cualquier otro tipo; [Prevent the exercise of property rights, management and disposition of assets of any other;]

XI. Impedir el acceso a la procuración e impartición de justicia; [Prevent access to the administration and enforcement of justice;]

XII. Impedir que se les escuche en todo procedimiento judicial o administrativo en que se vean involucrados, incluyendo a las niñas y los niños en los casos que la ley así lo disponga, así como negar la asistencia de intérpretes en procedimientos administrativos o judiciales, de conformidad con las normas aplicables; [Prevent to be heard in any judicial or administrative proceeding in which they are involved, including girls and children where the law so provides, as well as refusing assistance of interpreters in administrative or judicial proceedings, in accordance with applicable standards;]

XIII. Aplicar cualquier tipo de uso o costumbre que atente contra la dignidad e integridad humana; [Apply any use or practice that violates human dignity and integrity;]

XIV. Impedir la libre elección de cónyuge o pareja; [Prevent free choice of spouse or partner;]

XV. Ofender, ridiculizar o promover la violencia en los supuestos a que se refiere el artículo 4 de esta Ley a través de mensajes e imágenes en los medios de comunicación; [Offend, ridicule or promote violence in the cases referred to in Article 4 of this Law through messages and images in the media;]

XVI. Limitar la libre expresión de las ideas, impedir la libertad de pensamiento, conciencia o religión, o de prácticas o costumbres religiosas, siempre que éstas no atenten contra el orden público; [Limit the free expression of ideas, prevent freedom of thought, conscience or religion, or religious practices or customs, provided they do not conflict with public order;]

XVII. Negar asistencia religiosa a personas privadas de la libertad, que presten servicio en las fuerzas armadas o que estén internadas en instituciones de salud o asistencia; [Denying religious assistance to persons deprived of liberty, serving in the armed forces or who are in institutions or health care;]

XVIII. Restringir el acceso a la información, salvo en aquellos supuestos que sean establecidos por las leyes nacionales e instrumentos jurídicos internacionales aplicables; [Restricting access to information, except in cases that are established by national laws and international legal instruments;]

XIX. Obstaculizar las condiciones mínimas necesarias para el crecimiento y desarrollo saludable, especialmente de las niñas y los niños; [Hinder the minimum conditions necessary for healthy growth and development, especially for girls and boys;]

XX. Impedir el acceso a la seguridad social y a sus beneficios o establecer limitaciones para la contratación de seguros médicos, salvo en los casos que la ley así lo disponga; [Prevent access to social security and benefits or limitations for medical insurance contracts, except where the law so provides;]

XXI. Limitar el derecho a la alimentación, la vivienda, el recreo y los servicios de atención médica adecuados, en los casos que la ley así lo prevea; [Limiting the right to food, housing, recreation and medical care services appropriate in cases where the law so provides;]

XXII. Impedir el acceso a cualquier servicio público o institución privada que preste servicios al público, así como limitar el acceso y libre desplazamiento en los espacios públicos; [Prevent access to any public or private institution providing services to the public, as well as limiting access and free movement in public spaces;]

XXIII. Explotar o dar un trato abusivo o degradante; [Exploit or give abusive or degrading treatment;]

XXIV. Restringir la participación en actividades deportivas, recreativas o culturales; [Restrict participation in sporting, recreational or cultural;]

XXV. Restringir o limitar el uso de su lengua, usos, costumbres y cultura, en actividades públicas o privadas, en términos de las disposiciones aplicables; [Restrict or limit the use of their language, customs and culture, in public or private activities, in terms of the provisions;]

XXVI. Limitar o negar el otorgamiento de concesiones, permisos o autorizaciones para el aprovechamiento, administración o usufructo de recursos naturales, una vez satisfechos los requisitos establecidos en la legislación aplicable; [Limit or deny the granting of concessions, permits or authorizations for the use, administration or enjoyment of natural resources, once satisfied the requirements of applicable law;]

XXVII. Incitar al odio, violencia, rechazo, burla, difamación, injuria, persecución o la exclusión; [Incite hatred, violence, rejection, ridicule, defamation, slander, persecution or exclusion;]

XXVIII. Realizar o promover el maltrato físico o psicológico por la apariencia física, forma de vestir, hablar, gesticular o por asumir públicamente su preferencia sexual, y [Conduct or promote physical or psychological abuse by physical appearance, dress, speak, gesture or take public his sexual preference, and]

XXIX. En general cualquier otra conducta discriminatoria en términos del artículo 4 de esta Ley.

Chapter 6

1. In his book, Halperin is specifically describing the conditions under which homosexual male (i.e. “gay”) culture is produced and recognizes that this culture is problematic for its exclusionary tendencies in regards to race, gender identity, class, and a host of other characteristics. Nonetheless, the ideas which are proposed are still relevant and applicable to all social categories and classes defined by sexual orientation.

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Images on front (clockwise from top left):

The Stonewall Inn in NYC, San Francisco Supervisor Harvey Milk, the 2008 Gay Pride Parade in São Paulo, and an illustration of the Famous 41.